

POWDER RIVER BASIN EXPANSION PROJECT

DRAFT ENVIRONMENTAL IMPACT STATEMENT

TRIBAL CONSULTATION MEETING

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VOLUMES 1 - 3

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NOVEMBER 28-30, 2000

ROSEBUD, SOUTH DAKOTA

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Tuesday, November 28, 2000

MS. CLAIR GREEN: We would like to open. Many of the elderly here need to have lunch, and so we would like to have them go and get something to eat, and I would like to have Freemont say a few words and then we'll let people eat and start the program when we come back, if that would be all right with everyone.

(Opening prayer in Lakota at this time.)

(A recess was taken at this time.)

MR. FREEMONT FALLIS: Good afternoon. I'm Freemont Fallis. I'm here for President Kindle of the Rosebud tribe. He had to go to a meeting in Rapid City, and so he told me to do the welcome, welcoming you to the Rosebud Casino and Hotel here. I don't know, we've had a three day meeting in Lower Brule over this issue last week, so I hope with everybody here, with your comments, I hope that we stand as one nation. You know, united we stand; divided we fall. So let's stick with what we talked about in Lower Brule. We need to stick as one nation, so we can address our issues as one nation according to the treaty.

And I would like to welcome at least one superintendent here that is very supportive of the Lower Brule Sioux Tribes. I would like to thank Cleve Her Many Horses for showing up from Lower Brule. And I believe we also have Vice-president Wilbur Between Lodge from Pine Ridge. Is there

any other elected officials here? Okay, I see two back there. All right. Thank you. And there's two more over here.

All right, that's good, because this meeting is for, like it says, government-to-government relationship with the Surface Transportation Board in regards to this DM&E Railroad EIS that they are doing. And so at this time I would like to thank everybody for being here, and I would like to turn this over to Clair Green.

MS. CLAIR GREEN: Thank you, Freemont. I would also like to welcome everyone. We are here today, some people from a very long distance. Can you hear me all right? Before we start, I would like to start actually in doing introductions and go around the room and just have everyone introduce themselves and I guess we'll start this way. Introductions.

MR. SHANNON BROWN: Shannon Brown.

MS. OLETA MEDNANSKY: Oleta Mednansky from Rosebud.

MR. BILL SORACK: Bill Sorack.

MR. JOHN MILLER: John Miller, Resource Development Office for Rosebud Sioux Tribe.

MR. SONNY ZIEGLER: Sonny Ziegler, Lower Brule Sioux Tribe.

(Inaudible).

(Inaudible).

MR. VIRGIL FLUTE: Virgil Flute, Lower Brule Sioux Tribe.

(Inaudible).

MS. IRENE SKUNK: Irene Skunk from Lower Brule.

MS. IRENE FLUTE: Irene Flute from Lower Brule.

MS. DORIS GRASSROPE: Doris Grassrope from Lower Brule, South Dakota.

MR. GEORGE SMALL JUMPER: George Small Jumper. I work for Lower Brule.

MR. ALTWEIN GRASSROPE: Altwein Grassrope from Lower Brule -- (Speaking in Lakota.)

MR. ALVIN GRASSROPE: Alvin Grassrope, Tribal monitor from Lower Brule.

MS. MAXINE GRASSROPE: Maxine Grassrope, Lower Brule Sioux Tribe.

MR. MIKE GRAHAM: Mike Graham, Oglala Sioux Tribe.

(Inaudible).

MS. EVELYN CHARGING: Evelyn Charging, Lower Brule.

(Inaudible).

MR. CLEVE HER MANY HORSES: Cleve Her Many Horses, Superintendent, Lower Brule Agency.

MR. JIM KENT: Jim Kent, Hot Springs.

1 MR. WILBUR BETWEEN LODGES: I'm Wilbur Between  
2 Lodges. I'm acting president of the Oglala Sioux tribe.  
3 MR. TERRY GRAY: Terry Gray, Coordinator for  
4 Cultural Resources, Rosebud Sioux Tribe.  
5 MR. BUTCH ARTICHOKE: Butch Artichoker, Director  
6 of Rosebud Economic Development Corporation.  
7 MS. GENEVIEVE WHITE WING: Genevieve White Wing,  
8 Rosebud, South Dakota.  
9 MS. DOLORES KILLS IN WATER: Dolores Kills In  
10 Water, Elk Creek Advisory Council, Rosebud.  
11 MR. C. DON LAMOUREAUX: C. Don Lamoureux,  
12 Rosebud.  
13 MS. CALIER KALLY JONES: Calier Kally Jones,  
14 Elderly Advisory Council, Rosebud.  
15 MR. LEO CHASING IN TIMBER: Leo Chasing In  
16 Timber, Senior, Elderly Advisory Council from Rosebud  
17 Reservation.  
18 (Inaudible) Spring Creek.  
19 MS. ELAINE QUIVER: Elaine Quiver, and I'm here  
20 on behalf of myself and all the children that couldn't come  
21 and for all the elderly that didn't come Grey Eagle Society,  
22 Pine Ridge, South Dakota.  
23 (Inaudible) -- from St. Francis, Rosebud, Mni  
24 Wiconi Project. Thank you.  
25 MR. JEFF CADOTTE: Jeff Cadotte, Standing Rock.

1 MS. FAITH TAKEN ALIVE: Faith Taken Alive, Treaty  
2 Council, Standing Rock Nation.  
3 MS. MARY JANE TIOKASIN: Mary Jane Tiokasin,  
4 member of the Standing Rock.  
5 MS. IMOGENE TAKEN ALIVE: My name is (Speaking in  
6 Lakota) Lakota Indian name first -- I got that name first,  
7 before I was given this name, Imogene Taken Alive member from  
8 Oceti Sakowin, Standing Rock.  
9 MS. MARIE RANDALL: Marie Randall, representative  
10 from Oglala nation. Thank you.  
11 MS. ANNA FUHRMAN: Anna Fuhman, Pine Ridge,  
12 South Dakota.  
13 MS. CHARMAINE WHITE FACE: (speaking in Lakota)  
14 American name is Charmaine White Face, member of the Oglala.  
15 MR. JAMES KANGAS: James Kangas, U.S. Bureau of  
16 Reclamation, Rapid City.  
17 (Inaudible) Pine Ridge.  
18 (Inaudible) Pine Ridge.  
19 MR. OLIVER RED CLOUD: My name is Oliver Red  
20 Cloud, Chairman of the Black Hills Sioux Nation Council, and  
21 I'm a bull rider.  
22 (Inaudible) Great Sioux Nation.  
23 (Inaudible) Richard Weyaus, Standing Rock.  
24 MR. PHILIP FARRELL, JR.: Philip Farrell, Jr. from  
25 Wakpala.

1 MR. DEAN BEAR RIBS: Dean Bear Ribs, Standing  
2 Rock Council representative.  
3 MS. JUDY CADOTTE: Reva lost her voice, so that's  
4 Reva Gates from Ft. Yates on the Standing Rock, and she's  
5 Tribal Council member for Standing Rock, Lakota Treaty  
6 Council.  
7 I'm Judy Cadotte, Standing Rock.  
8 MS. DELORES TAKEN ALIVE: Delores Taken Alive,  
9 member of the Oceti Sakowin from Standing Rock.  
10 MS. CHRISTINE HOWARD: Christine Howard.  
11 MR. KENNETH PARR: Kenneth Parr, Bureau of  
12 Reclamation from Rapid City.  
13 MR. DAN SHINN: Dan Shinn from Burns and  
14 McDonnell.  
15 MS. WENDY SCHMITZER: Wendy Schmitzer U.S. Forest  
16 Service out of Douglas, Wyoming.  
17 MS. VICTORIA RUTSON: I'm Vicki Rutson from the  
18 Surface Transportation Board, and I thank you very much for  
19 the opportunity to meet with you today.  
20 MR. STEVE THORNHILL: Steve Thornhill with Burns  
21 & McDonnell from Kansas City, Missouri.  
22 MS. CLAIR GREEN: Thank you everyone. And again,  
23 we're grateful, and we have a court reporter that I forgot.  
24 MS. LYNNE ORMESHER: Lynne Ormesher, Pierre,  
25 South Dakota.

1 MS. CLAIR GREEN: Again, thank you all for  
2 coming. We have a draft agenda, but before I do that, one of  
3 two things I would like to bring your attention to. First is  
4 that we have a court reporter here, so the whole meeting will  
5 be transcribed, and I will ask when we get to comments, we  
6 have a microphone in the back, or if you have occasion to ask  
7 a question, to please state your name before you speak so that  
8 she'll be sure to attribute your comment to you. And try to  
9 speak as clearly or loudly if you're not using a microphone as  
10 you possibly can and I think that will be real helpful to  
11 her.  
12 In the back of the room on the table where you  
13 signed in there are some forms here that the Surface  
14 Transportation Board brought for written comments. There is a  
15 comment sheet, if anyone -- those of you who have been to some  
16 of the public hearings before --  
17 MR. OLIVER RED CLOUD: Before we start the  
18 meeting, I had a lot of elders here and I would like to have a  
19 -- there's a lot of fancy words and some of these older  
20 people don't understand, so they are going to ask questions.  
21 So you have to have someone to interpret that, explain it to  
22 them, because this is a real important meeting for the Lakota  
23 people, so you have to have someone there to interpret that,  
24 because there's some real fancy words coming in.  
25 MS. CLAIR GREEN: We'll try not to use any fancy

1 words. Is there someone that would like to do that  
 2 interpretation? Freemont?  
 3 MR. FREEMONT FALLIS: I only went to fourth  
 4 grade.  
 5 MS. CLAIR GREEN: Will you do that, Freemont, or  
 6 will somebody else like to do that?  
 7 MR. FREEMONT FALLIS: I can try it, I guess.  
 8 MS. CLAIR GREEN: Thank you very much for that  
 9 suggestion. We left a stack of comment sheets in the back.  
 10 While you're here at the meeting, if you would like to submit  
 11 written comments as well as voice oral ones, these sheets are  
 12 there for you to for your convenience to write on. Those of  
 13 you who have been to some of the other public hearings may be  
 14 familiar with them, but you can take them home. The comment  
 15 period is not up until January 5th, so there's plenty of time  
 16 to submit anything in writing after this meeting.  
 17 The second thing that's up there is a little pink  
 18 sheet of paper, which is how to get in touch with the Surface  
 19 Transportation Board. It gives their toll free hotline, if  
 20 you need an answer to a question, or for any other reason,  
 21 they also is a WEB site, and this gives the WEB site. So if  
 22 you wanted to pick one up before you went home, they are on  
 23 the back table down there.  
 24 Now I just wanted to go over the agenda just a  
 25 little bit to talk about what we had planned. We gave a lot

1 of thought to this agenda because we wanted to not just hear  
 2 comments, but also to provide information, and as much  
 3 information as possible as we go. Throughout, if people have  
 4 a question or don't understand something that's said, so that  
 5 the agenda reflects that, we've tried to give time for  
 6 comments throughout the two and a half days.  
 7 We would like to open today with a review of the  
 8 agencies, the draft EIS, the process and all of the Federal  
 9 personnel that will participate in that. As we go through, if  
 10 anybody really doesn't understand something, or has a specific  
 11 question about what they are saying, if you could raise your  
 12 hand, we'll try to be more specific in the way we talk about  
 13 it. We then will break.  
 14 I don't know, we've started a little later, it  
 15 will probably be closer now to 4:00 for open comments. If the  
 16 overview is not finished, we will try to finish it in the  
 17 morning, but there are some people who are here today and for  
 18 today only, and we recognize the fact that they would like to  
 19 comment, so we will break for that and then continue the  
 20 overview in the morning if we need to, if we don't finish.  
 21 I also will point out that at the end of the day,  
 22 after the open comments, we would like to hear from you if  
 23 there's anything specific as a part of this document that you  
 24 would like us to address tomorrow, we have on the agenda  
 25 tomorrow a couple of things; one is a Memorandum of Agreement,

1 one is a Programmatic Agreement, and one is an alternative  
 2 series of routes in a specific area where the Surface  
 3 Transportation Board would like to receive comment. If  
 4 there's anything else that you would like anyone here to  
 5 specifically address, if you can say -- if you can let us know  
 6 at the end of the day, we can include it in the agenda for  
 7 tomorrow.  
 8 So I would like to say again that this is a  
 9 government-to-government meeting for formal comment on the  
 10 Draft Environmental Impact Statement for the Powder River  
 11 Basin Expansion Project, which is the DM&E Railroad project.  
 12 We would like to stick as close to questions on the draft EIS  
 13 as possible and hopefully hold our comments to the specific  
 14 document or related -- or other areas that it includes or  
 15 doesn't include.  
 16 I was going to talk a little bit about my thing  
 17 on the slide here. We have a series of slides that everybody  
 18 will be talking from, and these slides were used at the public  
 19 hearings, so I would ask your understanding in recognizing  
 20 that we're also using them for this meeting. So if we say the  
 21 public, we really mean here for native people and Tribal  
 22 people representatives.  
 23 As we move on we'll describe the various agency  
 24 roles in reviewing the project and each agency will have a  
 25 turn to talk about their role in reviewing it. We'll also

1 provide an overview -- I don't know what's making that buzz --  
 2 an overview of the project in general, and Burns & McDonnell  
 3 and the Surface Transportation Board Vicki Rutson will talk  
 4 about the preliminary results of the environmental review and  
 5 then we'll go to comments.  
 6 We have structured our agenda so there can be  
 7 comments throughout the two and a half days, and again this  
 8 was done through the public hearing, and so that's why there's  
 9 a specific comment at the bottom, the public meeting agenda.  
 10 I sort of said that, didn't I? Do I have your slide, the blue  
 11 graphic one. Well, I was going to put it up. I was going to  
 12 go over it.  
 13 The rest of the ground rules of the meeting,  
 14 these ground rules are very consistent with the ground rules  
 15 that have been used at the public hearings, and I think they  
 16 just speak to consideration of one another when we're talking  
 17 and when we're commenting, and we would like to make sure when  
 18 we get to the open comment section, that there's only one  
 19 speaker at a time. We would ask people to try to listen to  
 20 what everybody has to say, as we're going to try to listen to  
 21 everyone.  
 22 And although we have no specific time limits for  
 23 comment, I think almost everyone in this room has strong  
 24 feelings and would like to say something. So I would simply  
 25 ask everyone to please be mindful that there are a lot of

1 people that would like to speak and just take that into  
2 consideration when you're talking in terms of the amount of  
3 time you use up, and I guess that's it.

4 I guess the other is just to respect everyone's  
5 opinions. I think we're all here to listen to comments. We  
6 really want to try to understand what people have to say.  
7 These comments will be a part of the record and as you'll hear  
8 later, will be answered, or at least addressed in the final  
9 Environmental Impact Statement. And so that we would try to  
10 respect everybody's opinion, and we would ask the same of  
11 everyone here. And with this, I will turn is over to Vicki  
12 Rutson.

13 MS. VICTORIA RUTSON: Thank you, Clair. Again,  
14 my name is Vicki Rutson. I work for the Surface  
15 Transportation Board. If I'm standing in the way of the  
16 slides I'll try to move a bit so everyone can read them. I  
17 manage to get in everybody's way that way.

18 What I would like to do is tell you a little bit  
19 about the Surface Transportation Board and then tell you what  
20 the Board has done so far with the proposal that the railroad,  
21 the Dakota, Minnesota and Eastern Railroad has submitted to  
22 the Surface Transportation Board. And then I'll finish up by  
23 telling you a little bit about what we hope to accomplish  
24 today, where we are in the environmental review process and  
25 what the next steps are in that process.

1 I'm a lawyer at the Surface Transportation  
2 Board. But I have learned that lawyers can be very confusing,  
3 so I will try not to be that way. If I'm speaking and the  
4 words I'm using are the wrong words, or I'm not making myself  
5 clear to you, please raise your hand and we'll stop and find  
6 out what I'm not being clear about and let me try again.

7 So with that, the Surface Transportation Board is  
8 a small Federal agency located in Washington, DC. There are  
9 about 130 of us that work there. The Board itself is composed  
10 of three people, and those three people are responsible for  
11 making the final decisions on applications that are brought  
12 before the Surface Transportation Board. Those three people  
13 are the chairman, who is named Linda Morgan; the vice chairman  
14 who is named Wayne Burkes; and a board member who is named  
15 William Clyburn.

16 Now because we have had a presidential election  
17 it's likely that some of those board members will change, but  
18 we're not going to know that for sure, at least until we know  
19 who is going to be our president. Congress has given the  
20 Board a responsibility. Congress has ordered and required  
21 that the Surface Transportation Board make decisions about  
22 railroad applications.

23 So when a railroad wants to abandon a line or  
24 build a new line, or merge with another railroad, that  
25 railroad has to come to the Surface Transportation Board and

1 file an Application. That is what the Dakota, Minnesota and  
2 Eastern Railroad did back in February of 1998. It filed an  
3 Application with the Surface Transportation Board to construct  
4 a new railroad line that would start at the end of Dakota,  
5 Minnesota and Eastern's existing rail line in South Dakota,  
6 and go all the way into Wyoming's Powder River Basin, over 260  
7 miles long.

8 Also in DM&E's Application it wanted -- it asked  
9 for permission to construct two small rail lines around two  
10 communities in Minnesota, called Mankato, Minnesota and  
11 Owatonna, Minnesota. All that information was in the  
12 Application that DM&E filed back in February of 1998. When  
13 that Application came in to the Board, it meant that the  
14 board needed to do two kinds of reviews of the Application  
15 under two different laws.

16 The first law is called the Interstate Commerce  
17 Commission Termination Act. That is the board's governing  
18 statute, the law that created the agency, and the law by  
19 which Congress told the agency what it needed to do. The  
20 second law is the National Environmental Policy Act. That  
21 prescribes the way that the agency must look at the  
22 environmental impacts of what the railroad is proposing. So  
23 those are the two laws that created the two different  
24 processes in this case.

25 I'm going to talk very quickly about the first

1 law and the first process. That's not really what I do, and  
2 that's not what really we're involved with today. We're  
3 really concerned about that second law, the National  
4 Environmental Policy Act. But I would like to spend a few  
5 minutes talking about the other process, and that first law,  
6 the Interstate Commerce Commission Termination Act.

7 Under that law, for short I will just call it  
8 the I-C-C-T-A or ICCTA, which is a horrible word, but that's  
9 known for short. Under ICCTA, the Surface Transportation  
10 Board needs to ask three questions when a railroad Application  
11 to construct comes before it.

12 The first question is is this project necessary.  
13 The second question is is this Applicant -- in this case it's  
14 the Dakota, Minnesota and Eastern Railroad -- is this  
15 Applicant financially fit to do this project. And the third  
16 question is is this project in the public interest.

17 The Board asked those three questions and  
18 answered them back in December of 1998 in a decision. But in  
19 that December 10th decision the Board said, Yes, we do think  
20 that this Applicant is financially fit; that there is a need  
21 for this action; and that this railroad construction would be  
22 in the public interest. But, the Board said all of our  
23 decision is based on this information in the Application and  
24 not all the information is there because the environmental  
25 review process is just getting started. And until the Surface

1 Transportation Board, the decision makers, have all the  
2 information about the potential environmental impacts, they  
3 can not make a final decision.

4 So the Board said, We're making this decision  
5 now, but this is not a final decision. We will not issue a  
6 final decision until all the information is in front of us.  
7 And that is my job and the job of the other Federal agencies  
8 with me today, to make sure that before the decision makers  
9 issue a final decision on DM&E's Application, they have all  
10 the information in front of them.

11 Then whatever decision they make is up to them.  
12 But our job is to make sure they know what the impacts of  
13 DM&E's Application and alternatives to that Application are.  
14 We tried to do that to some extent in the draft of our  
15 environmental impact statement. We issued that document on  
16 September 27, 2000.

17 Now if anyone has seen it, the entire document,  
18 you know it is very, very long, and it is complicated. I did  
19 my best to try to write the executive summary in ways that  
20 everyone could understand. But the project is very  
21 complicated and it was difficult to do that. We had hoped --  
22 what we had tried to accomplish in the draft environmental  
23 impact statement was to tell all of you what we were thinking  
24 based on the information that we had in front of us at that  
25 time. We tried to explain what we thought the potential

1 environmental impacts of DM&E's proposal are. We tried to  
2 explain the impacts that we thought were the significant  
3 impacts. And we tried, where possible, to propose some  
4 mitigation that would lessen those impacts.

5 The draft environmental impact statement's  
6 purpose was to give everyone a sense of what we were  
7 thinking, but most important to ask for your comments on what  
8 we wrote. If you felt that what we wrote was not clear, that  
9 you didn't understand it, that impacts that you feel are  
10 likely to happen were not adequately explained or listed, or  
11 if you think we did a great job and we accomplished all those,  
12 any comments that you have, that is what we are here for  
13 today, to listen to what you have to say about our draft  
14 environmental impact statement.

15 When we're finished with the comment period, when  
16 we've gotten all the written comments and heard the oral  
17 comments through the series of public meetings that we're  
18 having, this is what the next step is going to be. We'll take  
19 all the comments, whether they are written comments or oral  
20 comments, no matter what the form, and we'll respond to them  
21 in a document called the final environmental impact statement  
22 or FEIS. If necessary we'll do more environmental analysis in  
23 that document. We'll also set forth some recommendations to  
24 the decision maker.

25 When we're finished with the final environmental

1 impact statement, and we issue it to the public, our  
2 responsibility under the environmental impact -- under the  
3 National Environmental Policy Act will be finished. That's  
4 the second stage in the process. When we issue the FEIS, the  
5 environmental review process is over.

6 At that point the decision makers, the Board,  
7 will have all the information in front of them that they need  
8 to make a final decision. They will then have to make one  
9 choice out of three possible choices on this matter. They'll  
10 decide either to approve DM&E's Application as it was  
11 originally submitted; to approve it but only if certain  
12 conditions take place at the same time that would mitigate or  
13 lessen some of the environmental impacts; or third, they could  
14 choose to deny DM&E's Application, in which case there would  
15 be no railroad built, no new railroad built.

16 So those are the three choices: Approve it,  
17 approve it with conditions, or deny it. Now in drafting the  
18 environmental impact statement, the Board worked together with  
19 five other Federal agencies. The Board is the lead agency  
20 because it has jurisdiction over railroads under the  
21 Interstate Commerce Commission Termination Act. But other  
22 Federal agencies will be issuing permits as well, and so they  
23 worked with us in drafting the environmental impact  
24 statement.

25 The five other Federal agencies that we've been

1 working with are the Forest Service, the Bureau of Land  
2 Management, the Army Corps of Engineers, the Bureau of  
3 Reclamation and the Coast Guard. Some of those agencies are  
4 with me here today, and they will be talking a little bit  
5 about what their agency's role is in this project.

6 So with that, I would like to thank you again for  
7 the opportunity to be here, and introduce Wendy Schmitzer from  
8 the Forest Service, who will be telling you a little bit about  
9 the Forest Service's role. Thank you very much.

10 MS. CLAIR GREEN: Elaine?

11 MS. ELAINE QUIVER: I was going to ask the people  
12 that are here -- I wondered if maybe it was my stomach  
13 growling. I wanted to ask about -- could you put it back  
14 where -- how much involvement do we have from the Wyoming  
15 tribe? I was asked and I was wondering if any of the Tribes  
16 from Wyoming are here, because after all, the mineral that's  
17 going to be transported needs to be talked about, too. Those  
18 are -- I'm seeking comments from how we got into this  
19 situation of the railroad and all the transportation and all  
20 this, because the mineral has to be extracted or mined and  
21 then transported, and I was wondering how the Wyoming Tribes  
22 are involved in this, and that's one of the questions I think  
23 our elders have is, you know, as a Great Sioux Nation and  
24 Great Teton Nation, we have Tribes that are involved that  
25 should be here that are not here today, and I think this is

1 something, as days go by, we always talked about, and I think  
2 these are some of the comments that we need to talk about.  
3 And the National Grasslands, and so forth, that are involved,  
4 a lot of us Indian Tribes use the Grasslands, the things that  
5 grow in open places. So I was hoping that -- well, there's  
6 Mr. Brown; I hear his voice -- so I think this is what I'm --  
7 I wanted to ask, is I think we need to have a thorough  
8 understanding that there's not just a few of us; there's a lot  
9 of us that are involved, and there's a lot of Tribes, and two  
10 bands that are involved in this issue with that. I'll wait  
11 for your further explanation of different agencies. Thank  
12 you.

13 MS. VICTORIA RUTSON: We have Wendy Schmitzer  
14 from the Forest Service. One of their responsibilities is the  
15 Thunder Basin National Grasslands, and perhaps it would be  
16 best if I let her speak to that, and if after we do that you  
17 still -- it appears that we still need to talk more about it,  
18 just say that we haven't answered your question. Thank you.

19 MR. OLIVER RED CLOUD: I would like the mike.  
20 Well, you have to understand Lakota.

21 (Speaking in Lakota.)

22 Okay, now you're talking about a lot of things  
23 and there will be a lot of questions asked. I myself, I went  
24 through that package that you brought over, and you send me a  
25 full box and in there there's a lot of things that I really

1 don't understand.

2 You talk about the decision makers. Where do  
3 they get their consent? See, that's one, because you really  
4 look at it, like the United States Constitution and our  
5 treaty, there's a lot of difference in that. You can't use  
6 United States Constitution on us, on our treaty rights, and  
7 states of South Dakota, Montana, Wyoming can't do that.  
8 So anything like that comes -- most of these  
9 people here, they really living under treaties. I myself  
10 been working on this treaty for many years, and a lot of  
11 issues like this come into the reservation. So this consent  
12 belongs to Lakota, not this Congress. Congress have to come,  
13 not South Dakota or Montana or Wyoming, because that train  
14 will be coming through there. And the right-of-way, you could  
15 control that. You could beat that right-of-way because you  
16 can use some other laws. In fact, your state could beat that  
17 right-of-ways. They could come through.

18 But that consent, it's a big word, and people  
19 here, if you ever ask these people consent, you going to do  
20 that on this project, this is the people that made the  
21 treaties nation to nation, not United States government.  
22 Remember that. So we have our rights and on our treaty, 68  
23 Treaty down below there's a 71, and I want Daschle to see  
24 that, or the governor or whoever, Congress to see that.

25 You know, a lot of time past years there's a

1 lot of things that went through to us, to the Lakota people  
2 that they never ask. So this is a warning. If we have to go  
3 to the Court, then you set a date. There's not much time.  
4 You just let us know. A few months ago you brought this out  
5 and we have to look around for an attorney, because we will  
6 proceed, too, in United States. Because I talked to the other  
7 nations. I went to the world -- (inaudible). I talked to the  
8 nations and that's where I got a lot of things. I learned a  
9 lot of things about United States on behalf of Lakota people.

10 So what you're talking about, you have to --  
11 you're going to hear some people talking today about their  
12 treaty. But I myself, I been working on this treaty for many  
13 years, but now as human rights, you can start from there to  
14 nation to nation and all -- (inaudible) -- then come to Indian  
15 tribe and treaty tribe.

16 So that United States Constitution and Indian  
17 tribe, you're talking about treaty tribe, you're going to run  
18 into problem, because Lakota people today, they want that.  
19 Because back in the 70s, 60s, they still owe us thousands,  
20 millions on the railroad track. They never sell that, and  
21 they still bypass and started another one over here.

22 I don't think that's right, and we still control  
23 51, because we never said we were here on the human rights.  
24 We were here on the State of South Dakota. We don't have to  
25 sit down with them. We had to go to Congress. We could go

1 up a little more; that's where we're at today. So I think the  
2 people are going to tell you their treaty, how it will work.  
3 Thank you.

4 MS. WENDY SCHMITZER: Did everybody understand  
5 that? Is there some clarification needed? Do we need any  
6 translation on this last comment?

7 Okay. Well, I would like to introduce myself  
8 again. I already told you once that I'm Wendy Schmitzer with  
9 U.S. Forest Service, but in my real life I'm a mother of two  
10 and I raise dairy cows. So I am connected with the land and I  
11 understand hard work; milk at sunrise and milk at sunset every  
12 day.

13 As a Federal employee my job is to represent the  
14 Medicine Bow Routt of the National Forest Service in Wyoming,  
15 and also representing the Thunder Basin National Grasslands in  
16 Wyoming, and also representing the Nebraska National Forest in  
17 Nebraska, which has the jurisdictional management of the  
18 Buffalo Gap National Grasslands, which are also in South  
19 Dakota.

20 It's my agency's responsibility to determine  
21 whether or not to grant an easement to the DM&E Railroad  
22 Corporation to cross the National Grasslands in South Dakota  
23 and in Wyoming. We received an Application a couple of years  
24 ago from DM&E asking us to consider granting them an easement  
25 in order to build a new railroad, brand new railroad across

1 the Grasslands. It has been my agency's responsibility to  
2 analyze the effects of what that construction would be on the  
3 animals, on the earth, on the environment, on the people as  
4 that path would cross the Grasslands -- yes.

5 MR. GARY SILK: How come you didn't inform the  
6 Indian Tribes about this when you got it a couple years ago?  
7 How come you waited so long?

8 MS. WENDY SCHMITZER: When we received the  
9 Application we did do a scoping, and we did send out a number  
10 of environmental notices, legal notices. We also sent a  
11 number of notices out to the Tribes that we were aware of that  
12 had interest in the Grasslands. There are a number of public  
13 scoping meetings held initially to determine what the  
14 formation of the original scope of the study should be.

15 So if there was a lack of not reaching people,  
16 then I guess I could tell you that my agency was not aware of  
17 that. Yes.

18 MR. GARY SILK: (Inaudible.)

19 MS. WENDY SCHMITZER: If you want to stand up I  
20 could probably hear you.

21 MR. GARY SILK: My question is why you don't have  
22 any like Lakota or Indian people in the decision making role?

23 MS. WENDY SCHMITZER: I'm going to have to come a  
24 little closer. I'm sorry, I can't hear you.

25 (Interruption of proceedings.)

1 MS. CLAIR GREEN: Would you also let us know who  
2 you are so the court reporter can get your name.

3 MR. GARY SILK: (Speaking in Lakota.)

4 Why do you not have any Indian people, native  
5 people in roles of decision making?

6 MS. WENDY SCHMITZER: That's a good question.  
7 You ask a very good question. We don't -- I can't answer  
8 that. As far as the decision making process, we have not made  
9 any decisions. No decision in the Forest Service has been  
10 made, none. We have a technology problem here.

11 MR. DAN SHINN: He's going to bring a better PA  
12 system. It may be a little while before we can get one that  
13 works.

14 MS. WENDY SCHMITZER: I will try to come a little  
15 closer and project a little louder. I would like to address  
16 your question. I don't have an answer as to why there is no  
17 one in the decision making process within the Forest Service.  
18 We don't have any Indians that are in that role.

19 UNIDENTIFIED SPEAKER: Not qualified or --

20 MS. WENDY SCHMITZER: No, I don't know --

21 UNIDENTIFIED SPEAKER: -- not good enough?

22 MS. WENDY SCHMITZER: No, not at all. I am not a  
23 decision maker.

24 UNIDENTIFIED SPEAKER: You just said that you  
25 make decisions to grant easements.

1 MS. WENDY SCHMITZER: No, the Forest Service is;  
2 I am not. My agency is granting -- or making the  
3 determination whether or not to grant easement to the  
4 railroad, okay, and we have archeologists that work for us.  
5 Eva Carter or Ian Richey, who you have all met previously,  
6 represents the cultural heritage resource within our agency.  
7 He's not here today because he was on vacation, and I  
8 apologize for that, but I couldn't make him give up his  
9 holiday vacation.

10 As far as the decision making process, we look at  
11 a much bigger picture. We're not looking at the site specific  
12 always, but the broader picture. In the environmental  
13 analysis, again the document that you have all read, the  
14 Forest Service has two preferred alternatives. Our preferred  
15 alternative is this: If after the environmental analysis is  
16 completed and the Surface Transportation Board and the other  
17 agencies agree that the purpose for this project is  
18 sufficient, then we would consider alternative C.

19 But if it is determined that environmental  
20 analysis is not -- or the impacts are so great and are so  
21 significant that they can not be mitigated to a reasonable  
22 level, and the project is not in the interest of the public,  
23 then our preferred alternative is no action.

24 UNIDENTIFIED SPEAKER: Again, you have some  
25 native people employed to do that research for you?

1 MS. WENDY SCHMITZER: Yes. Your question again  
2 was do we have Native American signers.

3 UNIDENTIFIED SPEAKER: Yeah, why don't you have  
4 people -- (inaudible).

5 MS. WENDY SCHMITZER: His question is why the  
6 Forest Service doesn't have people qualified in the decision  
7 making process who are Indian.

8 UNIDENTIFIED SPEAKER: All the people involved in  
9 this process, because all you have up there -- I seen all the  
10 leading agencies involved. The lead agencies involved have no  
11 interest in our people and our way of life.

12 MS. WENDY SCHMITZER: I can't answer the hiring  
13 condition. I can't respond to that, I'm sorry. I'm an  
14 environmental analyst. I'm not a personnel person.

15 UNIDENTIFIED SPEAKER: People all say I'm sorry.  
16 The question is why isn't the government going to -- all you  
17 send are women. Where are the lawyers or --

18 MS. WENDY SCHMITZER: Well, I'll tell you, women  
19 are smart. We are, really. We understand things with the  
20 heart, not always the head, and I think that's maybe a good  
21 thing. I can tell you that my experience in the Forest  
22 Service is very long. I have more experience than my male  
23 counterparts in doing these large projects, and that is why  
24 I'm here today. This is my fifth project of this scope and  
25 this size basically. Yes, ma'am.

1 MS. EVELYN CHARGING: Evelyn Charging, Lower  
2 Brule. Can you tell me where the scope meetings have been  
3 held?  
4 MS. WENDY SCHMITZER: Yes. We started off  
5 initially in Wyoming and worked through South Dakota and into  
6 Minnesota. We just finished all the public meetings on the  
7 draft EIS, with the exception of this meeting today. There  
8 were twelve meetings held, starting in Douglas, Newcastle,  
9 Rapid City, Pierre, Brookings, Mankato and Rochester,  
10 Minnesota. Many of those meetings were two a day, where we  
11 started at 1:00 in the afternoon and we finished at midnight.  
12 UNIDENTIFIED SPEAKER: You said it took you guys  
13 two years to put together, and how many days -- the deadlines  
14 are January 5th already, and if there was an extension of only  
15 15 days, there are thirteen volumes of this, so how do you  
16 expect everyone to go through this in just a little bit of  
17 time, if you guys took two years?  
18 MS. WENDY SCHMITZER: I will tell you what, we  
19 have heard across the countryside that same comment many times  
20 over. People want more time, and that's up to the Surface  
21 Transportation Board to determine whether that extension will  
22 be granted, but you are not alone in bringing up that point.  
23 Many, many people have said the document is too large and the  
24 time is too short to review it. We need more time. So the  
25 Surface Transportation Board will make a determination on

1 whether or not they are going to extend that time.  
2 UNIDENTIFIED SPEAKER: What actual Tribes were  
3 all notified before all this was done?  
4 MS. WENDY SCHMITZER: Dan, could you respond to  
5 the issue of the Tribes that have been notified across the  
6 three Grasslands and three states?  
7 MR. DAN SHINN: Probably Clair would answer that  
8 question a little better than I could actually come up with  
9 the actual names of everyone.  
10 MS. CLAIR GREEN: The question was?  
11 UNIDENTIFIED SPEAKER: What Tribes were contacted  
12 before all this was taken place.  
13 MS. CLAIR GREEN: There are 32 Tribes on the  
14 consultation list for this project and in Wyoming it is  
15 Northern Arapaho, Shoshone, to north of that the Northern  
16 Cheyenne.  
17 UNIDENTIFIED SPEAKER: Is it -- do you consider  
18 that contact that they were phoned and so and so wasn't in,  
19 and so what contact was made or what effort was made, or is  
20 there a formal contact that was done by letter, something that  
21 should have documented that we can see where these people,  
22 these Tribes were officially and formally contacted?  
23 MS. CLAIR GREEN: Yes, and I don't have it with  
24 me today, but every time we have a meeting such as this one  
25 letters were sent to the chairmen. Letters were sent to the

1 people that they appointed to the Tribes at these meetings,  
2 and that was followed up by phone calls from me.  
3 UNIDENTIFIED SPEAKER: I have another question.  
4 As an indigenous people I want to know -- I want to know where  
5 is the THPO person? Have you contacted them? The lady from  
6 the Surface Board where is the --  
7 MS. CLAIR GREEN: Tim Mentz, you mean?  
8 UNIDENTIFIED SPEAKER: Where are these people  
9 here, were they on this board?  
10 MS. CLAIR GREEN: They were all notified of this  
11 meeting.  
12 UNIDENTIFIED SPEAKER: I'm saying they should be  
13 up there with you folks. They should be up there with you  
14 folks because again we are unrepresented up there. We see no  
15 Indian faces up there, and we have sites. We have burial  
16 sites. We have sacred sites, and yet we are so dictated to.  
17 We sit here and say -- we listen to you say, oh, we contacted  
18 this one. We contacted that one, but we are not represented  
19 up there.  
20 MS. CLAIR GREEN: Is this mike working so you can  
21 hear me back there or not? Let me respond to that in one  
22 second, please. That better? Can you hear me, a little  
23 louder?  
24 We've had a number of consultation meetings over  
25 the last two years, many of the people that you refer to have

1 been participants in those meetings. We ask -- let me finish  
2 here. I think one of our difficulties is that when there are  
3 meetings, when there are meetings like this one, I would  
4 welcome those people to be a part of this meeting and to stand  
5 here with us, and to help explain or go over some of the  
6 issues that we've tried to deal with or work on, which have no  
7 resolution as of yet.  
8 And unfortunately I find that too often they are  
9 unable to come to some of these meetings. Or if they come,  
10 they would prefer to sit at the other side of the table and  
11 listen to what the Federal agencies have decided or worked  
12 out, and I wish what you said was true. I would welcome them  
13 to come and sit at this table, because they have helped us in  
14 the process and we've had -- I know a lot of people say that  
15 they haven't had enough information. They haven't been  
16 involved.  
17 There has been involvement and there's been  
18 substantive involvement. It's not my place to inform every  
19 tribe of their tribe's involvement. That's what you have  
20 representatives for. If those people don't come back to you  
21 and talk about the meetings and talk about their participation  
22 and their help or assistance, I can't fix that part.  
23 But I want you to know that there has been  
24 substantive involvement from several Tribes. I wish more,  
25 and I don't know how to get that because it's really

1 important. Many of these subjects, many of these issues that  
2 have come up in a project like this are so terribly important,  
3 and I think that today this meeting, the chairmen and council  
4 people were invited. It's part of a government-to-government  
5 consultation process, and I'm very disappointed that there  
6 aren't more here. I thank those few that came. So I guess  
7 I'll stop there.

8 UNIDENTIFIED SPEAKER: I have a question is this  
9 a scoping meeting.

10 MS. CLAIR GREEN: No, this is a meeting to enable  
11 you all to make comments on the draft EIS. The scoping  
12 meetings --

13 UNIDENTIFIED SPEAKER: Is that oral?

14 MS. CLAIR GREEN: Both, either one. You came in  
15 a little late. We're starting it later, and we're trying to  
16 do a review of the draft EIS, and we've allowed people to ask  
17 questions if they don't understand, but at the end of today  
18 and also tomorrow, and the following day there will be plenty  
19 of opportunity for open comments.

20 UNIDENTIFIED SPEAKER: Do you plan to go into the  
21 communities on each respective reservation?

22 MS. CLAIR GREEN: If you all ask us to, there may  
23 be a possibly that we do that.

24 UNIDENTIFIED SPEAKER: I think that's a good  
25 idea.

1 MS. CLAIR GREEN: Well, I would like to be  
2 invited. You can't just jump into town square and do -- we  
3 would be very responsive to an invitation.

4 UNIDENTIFIED SPEAKER: You have to be the one to  
5 be asked?

6 MS. CLAIR GREEN: I don't think I would want to  
7 go if -- I don't think I would assume that people wanted me to  
8 go.

9 UNIDENTIFIED SPEAKER: Who do they ask to have  
10 that done? Are you the one to get that process completed; are  
11 you the person?

12 MS. CLAIR GREEN: They could ask me or they could  
13 ask Vicki Rutson of the Surface Transportation Board. Yes.

14 UNIDENTIFIED SPEAKER: Tribal council member, I  
15 just have a question. In this draft you got here, does it in  
16 the draft that you got here have bypass for Pierre in it or  
17 was this -- we just found out in September that they wanted to  
18 bypass Pierre and cross our land.

19 MS. VICTORIA RUTSON: In the draft we conclude  
20 that the Pierre bypass wasn't reasonable and feasible so we  
21 rejected it. So we did not analyze it because we found it  
22 wasn't a reasonable alternative. So it's not contained in the  
23 draft and right now not before the decision maker.

24 MR. CHARLES FLUTE: Excuse me, Charles Flute,  
25 Lower Brule Sioux Tribe. Was there alternate routes included

1 in that?

2 MS. WENDY SCHMITZER: Around Pierre?

3 MR. CHARLES FLUTE: Yes.

4 MS. WENDY SCHMITZER: I think we looked at one  
5 alternative around Pierre and that was discarded.

6 MR. CHARLES FLUTE: So there's been no  
7 environmental impact study done on the Lower Brule, impact  
8 study done for that bypass route then?

9 MS. WENDY SCHMITZER: I don't believe so because  
10 we didn't consider the bypass in detail. Do you think we  
11 could turn the volume down just a wee tad on this one? Blow  
12 everybody out of the room. I will conclude my little portion  
13 of this, unless there are other questions.

14 MS. MARY JANE TIOKASIN: Mary Jane Tiokasin from  
15 Standing Rock. We're wondering, you know, we have land  
16 management at Standing Rock and we were working on, oh, for  
17 about three years because we worked with our leases and stuff  
18 that the people, you know, rent our lands and stuff. We have  
19 a large land base and so what we were working on is getting  
20 the Grasslands in South Dakota, in North Dakota and Wyoming  
21 returned back to the Indians.

22 That's what we were working on and we're still  
23 working on, and we wrote the Forest Service and one of your  
24 departments, we were wondering, see they never notified the  
25 Sioux Tribe at Standing Rock, about this railroad or

1 Grasslands and we were one of the main reservations. Because  
2 we believe the land should -- the Grasslands that you're  
3 talking about, should be returned back.

4 And see we never got an answer from the people  
5 that the Tribal land management had sent to our request or  
6 whatever you call it, you know, that we wanted these returned  
7 to the Indians in these states because they are ours. And I  
8 think that they should have got an invitation or notification  
9 about these Grasslands.

10 And I'm with Allen, why didn't they put a Native  
11 American on this Forest Service and working with your office  
12 and the other offices because you know we got when you look at  
13 it we got a lot to say about what's going on with these  
14 Grasslands because they were just taken, I guess whenever the  
15 act opened up or -- and I think that they should answer us  
16 about -- we're working with the Sierra group out of Rapid City  
17 and we want these returned.

18 And so I think we should have been invited to  
19 help make -- put a Native American on your board because they  
20 can see from the other side where you can't. See, you see  
21 from the taking side and they had no say-so on turning them  
22 Grasslands over. And the railroad is going to ruin those  
23 Grasslands. You know it, I know it, everybody is going to  
24 know it.

25 And so I thought I would speak, because at Rapid

1 City I said that word, I have the right to make further  
2 comments about this DM&E Railroad. Thank you. I needed to  
3 know why there's no Native Americans on the Forest Service, or  
4 decision making. Everybody's wondering about that, because we  
5 are fighting for the Grasslands to be returned, and we just  
6 formed a new land committee outside of our land management,  
7 and they will be going to the Grasslands and Forest Service.  
8 So if we invite them to come to Standing Rock, would they  
9 come; that's what I want to know.

10 MS. WENDY SCHMITZER: I don't see any reason why  
11 they wouldn't, why we wouldn't.

12 MS. MARY JANE TIOKASIN: I just had to ask it, I  
13 like to hear you talk.

14 MS. WENDY SCHMITZER: Well, I appreciate that.  
15 My husband would disagree, but the issue that you raise is  
16 very important. The Grasslands are public lands, and we have  
17 the responsibility of taking care of them for the public,  
18 whether that public be Indians, ranchers, somebody from the  
19 city that's never seen a landscape before, or big open sky,  
20 all of those things are important to us, as they are to you.

21 There is a planning process right now that I  
22 think you're addressing. It's the Northern Great Plains  
23 Division, that's dealing with all the National Grasslands.  
24 And if you wrote your comment in, I know it's being  
25 considered. We had -- on that program we had over 26,000

1 comment letters received, and we've read each and every one  
2 of them, teams and hours and days and we are preparing  
3 responses right now, and we hope to have a decision out  
4 shortly. Yes.

5 MR. GARY SILK: Gary Silk. Talking about public  
6 lands, that ain't public lands, that's treaty lands.

7 MS. WENDY SCHMITZER: The Grasslands?

8 MR. GARY SILK: All the lands going to the Black  
9 Hills. All those lands are not public lands. You people  
10 should understand. Look up the treaties and live by the  
11 treaties before you approach us about these issues. There's  
12 a lot of things, like I say, you talk about Slade Gordon, you  
13 people, that's how he talks.

14 You people, listen and understand what we're  
15 trying to do here. We're fighting for a long time for our  
16 lives and children. We're fighting for you, so we have a  
17 better world. This is why we're all here, to have a better  
18 life. We're trying to stop destruction of mother earth here,  
19 and then forestry and all these other Federal agents, how  
20 could you give your decision, say how could you do that when  
21 you don't have the right to say.

22 MS. WENDY SCHMITZER: I can't argue that with  
23 you. I can tell you, though, that your concerns are shared.  
24 The authority that my agency has is to manage those lands.  
25 It's not to own them. It's not to decide who owns them, but

1 how the land will be used, and how it will be protected. And  
2 the treaty issues that are so close to your hearts are very  
3 important to us as well. We're not the agency that can turn  
4 the lands over to you. The government, Congress is the only  
5 one that can do that. We can not as a Forest Service. We are  
6 only the landlord, so to speak, the custodians of those public  
7 lands, and we try to keep the uses sensible.

8 MR. GARY SILK: I think this thing is all turned  
9 around here. We're the landlords. You're guests in our  
10 lands, and we treat you good. We gave you everything. We let  
11 you live here. We let you fish here. We're feeding you,  
12 taking care of you. If anybody should be here it's those  
13 Congress people, the ones that allow this to happen, they  
14 should be.

15 MS. WENDY SCHMITZER: I agree, they ought to be  
16 here, by golly, and I wish they would, too. I would like to  
17 have them stand up here in front of you and answer your  
18 questions. That would be a good thing.

19 MS. CHARMAINE WHITE FACE: My name is Charmaine  
20 White Face, and this is the same question I asked in Rapid  
21 City, and that is under what legality are you here? From my  
22 perspective you are illegally on our land, and just like what  
23 Mr. Silk said, you feel the tension rising in here, and it's  
24 rising because we are talking about treaty land that Thunder  
25 Basin National Grasslands is within the reserve area of the

1 1868 treaty.

2 And just like he said, we're the landlords, and  
3 so it gets -- the tension is rising, and until these treaty  
4 issues are solved, it's not Congress, it needs to go to the  
5 United Nations. We need to have an international mediator.  
6 This is an international incident; that's what's happening  
7 right here today. We don't have violence, so there's no  
8 media, okay.

9 MS. WENDY SCHMITZER: Thank goodness.

10 MS. CHARMAINE WHITE FACE: We're not Palestine  
11 and Israel, but we are Palestine and Israel. The only thing  
12 we don't have is violence is because we have respect, and we  
13 keep trying to teach you non Indians how to have proper human  
14 relationships, and that means honesty, integrity, and  
15 listening to what we're saying. And this is what I brought up  
16 to you in Rapid City.

17 I gave you copies of that 1851 treaty, 1868  
18 treaty. I told you then, Welcome to the Black Hills according  
19 to our ancestors, but have a safe trip home. And I gave you  
20 those maps of all the treaty areas that we are talking about  
21 here today.

22 That DM&E Railroad, they have been -- they took  
23 over that railroad line what in 1958 or '68. They owe us rent  
24 from all those years coming across, and then we still can ask  
25 them to leave. Now I don't know how this meeting is going to

1 keep on going with this tension going up. The secretary of  
 2 state needs to be here, Madeline Albright or United Nations  
 3 delegates need to be here to talk to all these people here.  
 4 You have how many bands here today, respectfully here today,  
 5 and I keep asking you, you all consider yourselves American  
 6 citizens. Uphold your own Constitution, Article XI of your  
 7 U.S. Constitution says the treaties are the supreme law of the  
 8 land. How can you say you are upholding the U.S. Constitution  
 9 when you are violating the 51 and 68 treaties? How can you  
 10 say that you have any legality to be here to tell us what we  
 11 are supposed to agree to with you when you are violating your  
 12 own Constitution, when you do not uphold the treaties that the  
 13 United States made with the Great Sioux Nation. You are  
 14 violating your own Constitution. You are violating your own  
 15 laws. Thank you.

16 MS. WENDY SCHMITZER: I am here to hear this.  
 17 This is a very important part of our process is to understand  
 18 your message. This is the first one of these meetings that I  
 19 have attended. And I'm very interested in your position and  
 20 your perspective on the Grasslands. And in fact, I would ask  
 21 who speaks for the Thunder Basin National Grasslands, which  
 22 tribe speaks for them, and who speaks for the Buffalo Gap?  
 23 Because in all of the scoping and in all of the  
 24 letters and all of the open opportunities, my phone has never  
 25 rung for someone to call me and speak for Thunder Basin.

1 Nobody has called me. Nobody has called me on Buffalo Gap.  
 2 I understand those areas, but I do not know who speaks for  
 3 them. I'm waiting to get your message. I want to hear what  
 4 you have to say to us about protecting and preserving the  
 5 Grasslands, but I have not heard, so I do not know who speaks  
 6 for the Grasslands. But that's why I'm here today, and I  
 7 welcome your opinions and your comments. Yes.

8 MR. GARY SILK: Gary Silk. I speak for them. My  
 9 four legged brothers, the winged ones, all the ones that are  
 10 out in that country, Crazy Horse, his land, I speak for his  
 11 land, and I'm telling you guys to go home.

12 MS. WENDY SCHMITZER: Well, I'm not exactly sure  
 13 how to move forward at this point. The issue of the treaties  
 14 is something that is incredibly important here today and is  
 15 DM&E just the strike point to open the door on conversation on  
 16 this so that we become aware of this, because I don't know.  
 17 We have many other uses, many other projects being proposed,  
 18 coalbed methane all those things that are happening on the  
 19 Grasslands, and I don't know if DM&E is so important that all  
 20 those other uses need to be considered as well?

21 I'm not sure I understand, so I need help from  
 22 you to explain to me, is DM&E the catalyst for the treaties  
 23 and recovering the Grasslands? Is that where we are, because  
 24 I'm not sure I understand.

25 MR. SHANNON BROWN: My name is Shannon Brown. I

1 had the opportunity to work for a while with archeologists  
 2 along this route, and at one of these places which was part of  
 3 the Grasslands it is -- a rancher leases a part of this and  
 4 there is a huge site on this Grasslands that we found, and you  
 5 could tell that they are using either a tractor or backhoe to  
 6 make holes around these sites, and I talked to Ian Richey  
 7 about this issue, and he has never gotten back to me on it.

8 MS. WENDY SCHMITZER: Do you know the name of the  
 9 rancher.

10 MR. SHANNON BROWN: I think that's -- I don't  
 11 know if I'm authorized to --

12 MS. WENDY SCHMITZER: Oh, it's not important. I  
 13 only ask you that to follow up on your comment. If we have  
 14 some excavation going on on private land, the Federal portion  
 15 of the Forest Service just cannot go in there and intercede,  
 16 but we can make conversation with these people, explain to  
 17 them the value of what they are doing or --

18 MR. SHANNON BROWN: This is happening on Federal  
 19 land.

20 MS. WENDY SCHMITZER: It's on the Grasslands?

21 MR. SHANNON BROWN: It's on the Grasslands and a  
 22 rancher leases it from the Grasslands.

23 MS. WENDY SCHMITZER: That's different, and we  
 24 have authority to go in there and stop an activity if it's  
 25 disturbing the site.

1 MR. SHANNON BROWN: I saw it with my own eyes and  
 2 I asked if they took pictures. The only people that had  
 3 cameras are archeologists and sometimes they didn't listen to  
 4 me on what I had to say on different things. So I'm telling  
 5 you now what are you going to do about these things. They  
 6 said it had been going on for a long time. I also tried to  
 7 talk to Ian Richey about other sites that are found in  
 8 Wyoming, and he just kept on jumping around the question.

9 And then those coal areas said some authority in  
 10 that area, preceding reports that were done, they said there  
 11 was no significant sites in those areas. There's lots of  
 12 sites out there that are thousands of years old, and yet then  
 13 you talked about contacting Tribes about -- a letter.  
 14 Usually in the past, common practice in this area is to just  
 15 send a postcard to the Tribes and that is common practice,  
 16 and sometimes when it's just sent to a tribe, you don't have  
 17 a specific office on there, it may be sent to whoever picked  
 18 up the mail that day. And if some people don't know who that  
 19 card is supposed to go to to get a proper response.

20 So there's a lot of things even today when I talk  
 21 prior when I talked to Ian Richey about this, it still has not  
 22 been answered. It seems like the Federal government puts  
 23 these people into these positions, they don't -- they don't  
 24 want to listen to the Indian people when they have -- just  
 25 like archeologists, I got to see Indian Country Today had this

1 little picture of an archeologist standing in this grave and  
2 it had "Rest in Peace" in there and the Indian guy standing  
3 there and the Indian guy asked him, he said, What are you  
4 doing? Oh, I'm digging to see if there's a grave here. And,  
5 Well, I can tell you right there, that is a grave. And then  
6 looking down by the headstone, he said, Well, I haven't  
7 interpreted that headstone yet. Even though we tell you, they  
8 don't listen, no matter what we have to say.

9 MS. WENDY SCHMITZER: Thank you for covering that  
10 with me. I will take that back to Ian and ask him directly  
11 what the situation is. I appreciate that. Yes, ma'am.

12 MR. KEN GATE: My name is Ken Gate from Standing  
13 Rock, and one question, I would like to see all of you five  
14 departments go back to your commander in chief, the President  
15 of the United States, when he said that the treaties were  
16 unfair to the Native Americans, what he really meant. You  
17 know, that was made in March 2000, that has been in the  
18 papers and stuff like that.

19 One of the things that you should have taken a  
20 look at is when he made that statement, you know, that should  
21 have halted your program right away, see, because you guys  
22 should have found out where the treaty lands are, what  
23 existence of where they were located at and stuff like that,  
24 instead of going on and causing more problems.

25 The way I take a look at it, sitting here, we

1 were the last ones to be notified that this railroad was going  
2 to be coming here. We talk about environmental things and  
3 Grasslands and stuff like that, but you're not asking the  
4 original owners of the land, the Teton Nation coming right  
5 through all the way from Minnesota this way, that's where they  
6 originated from, and that's one of the things that we're  
7 united together.

8 All we're asking is that we want to see this  
9 1851 treaty. We want to see that once. We want to take a  
10 look at it. That's the original document. This lawyer over  
11 here, sitting over here talked about two laws. That's  
12 international law, that treaty, so there's another law there.  
13 There's three of them. I put that above all these other laws  
14 the United States government made, and we should go underneath  
15 that, and that's what we're going to do by uniting together.

16 These are some of the things that we don't want  
17 to hear about, graveyards and start digging up your  
18 ancestors. You should take a look at it. That's what's  
19 happening here with some of this land that you guys are  
20 digging up, and stuff like that. Those are grandfathers and  
21 grandmothers. Some of the things that I get frustrated about  
22 because you guys already came here, you're going to show us  
23 what you have done already, but you haven't asked the original  
24 landowners of this, this whole territory. Thank you.

25 MS. WENDY SCHMITZER: I think it's important to

1 understand that in order to come to you to ask the question,  
2 we have to frame it in a way that everybody understands what  
3 the proposal is all about. I want to make it very clear that  
4 no decisions have been made at this point. There are no  
5 decisions made. We have a lot of work to do, and we intend  
6 to do a lot more work before this project is furthered or  
7 stopped.

8 And to come to you with an empty hand that has  
9 no information in it early on is not a good thing. We need  
10 to have routes where, you know, there's a chance that the  
11 train will go. So that if there are problems there, you can  
12 tell us that. But if we come to you with just a proposal  
13 that is empty, it has no facts, then you don't know how to  
14 respond.

15 So we're at that point now, where we're laying  
16 out the picture of what the proposal is, so that you  
17 understand what DM&E is proposing to do out there on the  
18 ground, where they are going to do it, how they are going to  
19 do it, why they want to do it, so you can tell us what you  
20 think, and what we should try to do different or whether or  
21 not there are special considerations. We're not thinking  
22 about what you need to tell us about, and that's where we  
23 are. Again, no decision has been made.

24 I'll ask you second; may I ask her first?

25 MR. GARY SILK: The railroad came through here

1 once before and they brought death. Now again you're coming,  
2 you're going to bring death again to our people and our land;  
3 that's what's going on here. Ever since back when the  
4 railroads first crossed the river, they brought all this  
5 death and disease. Now they are doing the same thing. You  
6 know, you did it to the buffalo. What did they want from us,  
7 they got everything they had. They left from us, killed our  
8 elders.

9 In that land out there is all of our relatives  
10 who fought hard for this land. We're not going to give it  
11 up. We're not going to allow the railroad to come into our  
12 lands. Too many people died for us right here. Why keep  
13 fighting. I really believe it's wrong. I don't think the  
14 United States government and the rest of the people in this  
15 country know who God is. If they knew who God is, who the  
16 creator is, they wouldn't be allowing this to happen,  
17 destroying everything in their path.

18 We're talking about the four legged. We're  
19 talking about the winged, all the things the creator made.  
20 And if your work is not done, you should go back and look  
21 into your government.

22 MS. WENDY SCHMITZER: Our work is not done, and  
23 that's why we're here, and I appreciate your perspective and  
24 your comment, and as I said before, we have not made any  
25 decisions and that's why we're here today, and that's why

1 you're here today, to help us understand.  
 2 She's wanting to ask and then I will ask you.  
 3 UNIDENTIFIED SPEAKER: (speaking in Lakota).  
 4 I would like to explain myself and what I have  
 5 just said to my people. I'm glad that they have awakened,  
 6 especially you see nothing but elders here, sitting here,  
 7 their concern about the future that they are caring for their  
 8 children that's walking behind us.  
 9 There's more to come, and at one time we had  
 10 this whole continent and we called it the Red Nation, and  
 11 there was many thousands of Tribes here walking this. And  
 12 when -- we just passed a Thanksgiving dinner. When that  
 13 first white man came onto the banks of our Lakota Nation, we  
 14 accepted him because he was just as human as we are.  
 15 That's our way of looking at the foreign nation  
 16 today. They come here. We shared everything with them. We  
 17 gave them everything because our ancestors thought that they  
 18 had to survive like we were surviving here on this great  
 19 nation, and they shared. They were generous. They helped  
 20 them. But the more we gave, the more they wanted.  
 21 And now they created our nation, the Great  
 22 Sioux Nation, with bands of Lakota Can,te, and that's where  
 23 we're at and that's where we're taking care of our children.  
 24 The rest of it is taken by the foreign people. They are  
 25 making their richness. They are making their livelihood.

1 They are making whatever they want here on this our nation,  
 2 the Red Nation, and we're in a Great Sioux Nation, and yet  
 3 they want more.  
 4 They want to cross our -- in the Black Hills  
 5 now the gold is all gone, so where are they going to go next,  
 6 back across to their homeland and dig for gold or, you know,  
 7 these are things that you people need to be educated in.  
 8 I know all about you. I read many, many books  
 9 and many, many papers to understand the life ways, the  
 10 livelihood of your people, you know, but it just seemed like  
 11 they gave us a time period. We don't live by time. God gave  
 12 us time to live, so we look forward to that. We don't say  
 13 you just have that much time, you do that. No, we don't do  
 14 that. We carry on.  
 15 We support each other to the time period when  
 16 Tunka-sila calls us home. And the homeland we have here is  
 17 where we come from, and that's where we will be going back  
 18 to, and that's why we say the law of the land. Our ancestors  
 19 have had this whole nation. Parts of them are here on the  
 20 land that we're all sitting on and working on and creating.  
 21 A lot of the things that is hurting the people  
 22 of today, but the Great Sioux Nation, we're coming back  
 23 together and we're going to work hard for our children. We  
 24 don't have much time. See my elders here, they don't have  
 25 much time left, but we're going to stand up one more time.

1 You see some of them in wheelchairs, some of them with canes  
 2 and some of us with big mouths like me trying to educate you  
 3 people that have come to us for your survival.  
 4 We like to share things with you people. We  
 5 like to do things. We understand. I'm glad that you made  
 6 clothes, fancy clothes that I can wear, you know, if that  
 7 manufacturing clothing department never came to this land,  
 8 you know, I'd still be hunting or doing something for my  
 9 clothes. But here I'm wearing things, and these are the  
 10 things that is the education part of our world, and in  
 11 support of our world, walking together in support of a  
 12 better future for our children.  
 13 But when there is more pushing done, you know,  
 14 we get pushed around, You don't do this, you do that. You  
 15 come, you live under my Constitution. You don't live under  
 16 your law of the land anymore because I'm taking over, you  
 17 know. But we studied, our children are educated enough to  
 18 stand up and say, hey, we understand now how our  
 19 grandparents, our ancestors wanted us to live and carry on  
 20 for them. You heard a lot of people talking and we need --  
 21 I don't want you to go home. Because someone even said go  
 22 home, but I don't want you to go home, so that you hear.  
 23 There's a lot more people here that are going  
 24 to make you understand why they don't want that railroad  
 25 through here. I for myself, I don't want them to cross this

1 Great Sioux Nation again. They did it once before. They  
 2 made promises; they never kept their promises, but we just  
 3 let them do it. We just let them do it because we couldn't  
 4 do nothing. There's always that Constitution, by law, the  
 5 Congress, the higher-up with the power.  
 6 But what is happening today, too much power are  
 7 creating more problems for their own people, too. You don't  
 8 even have a president. They can't make up their mind to have  
 9 a president. And Clinton has recognized the Lakota Nation as  
 10 a sovereign nation. And when you say sovereign, our ancestors  
 11 that signed the treaty law, and the ones that are following  
 12 you are in the sovereign nation today, and that's what we're  
 13 standing on.  
 14 And when you go home, you talk to your people,  
 15 forest rangers or whoever you are representing. Go home and  
 16 tell them there's an Indian woman over there telling me to  
 17 come back and tell you this, and to educate you that the  
 18 things that belong to them, they don't want them disturbed  
 19 any more or taken over any more, because they are creating  
 20 their nation.  
 21 Our children are going to take over. They are  
 22 the ones that walk this Great Sioux Nation, and they are  
 23 entitled to that. Our ancestors left that for them. We're  
 24 carrying on. How many days we have left, we don't know, but  
 25 you see my elderly here, I'm proud of my elders to come here.

1 I wish each and every one of them could say a word for you to  
2 understand and take home with you to educate and tell your  
3 people, you say forest rangers and all them people, they  
4 don't understand us.

5 Those are ours. We didn't give them up.  
6 There's no one says that we gave up our land. It's ours and  
7 the first white man that came, he had the topsoil they gave  
8 him for their survival, because they planted seeds for their  
9 survival of their families. That's what they did, but now  
10 they are getting into our mineral rights, and they are trying  
11 to carry some mineral across the nation through our Great  
12 Sioux Nation.

13 I don't think they should do that, and I myself  
14 don't want that to happen, because we don't know what's going  
15 to happen and what's going to be carried back here on to our  
16 nation. They have plans. We know that when they plan on  
17 something to take from us, they make great plans, and they  
18 make it look so good to us and then they say a time period;  
19 that's the end of the time you're going to have to sign this  
20 paper or we are -- we'll take it anyway, and we don't want  
21 that no more. We can ask for time. We have time in this  
22 world for our children and their children. We want that time  
23 and no one should tell us how to spend our time. Just only  
24 the great spirit can tell us that. So I thank you very much,  
25 and I hope what I said would educate at least a word to your

1 people and understand how we feel as Lakota Oyate. I hope you  
2 take that back, and the more we talk, the more education we'll  
3 have and understanding. Thank you. Pilauna.

4 MS. WENDY SCHMITZER: Those are goods words and  
5 wise words and I will take them back. We've had a request to  
6 have a break, but could I take this one last question? Could  
7 you turn this mike up, please? They can't hear it in the  
8 back.

9 UNIDENTIFIED SPEAKER: (Speaking in Lakota).  
10 I don't live very far from here, and I belong in  
11 this Rosebud Reservation, and I was raised -- born and raised  
12 here. I want to thank the villagers Standing Rock, Lower  
13 Brule, Pine Ridge and I'm not going to say Rosebud, they are  
14 all after me. So I want to thank you and also the young  
15 ladies, the attorneys and all of you come. And back here we  
16 have a superintendent from Lower Brule and all of the Lower  
17 Brule relatives. We got a chairman and superintendent and  
18 occasions like this they never go.

19 But we the elderly advisory council of --  
20 (Speaking Lakota) -- they kick us out. So that's why we  
21 travel to your reservations. I think on this issue, as I  
22 sit here and listening, they just need your comments.

23 (Speaking in Lakota.)  
24 We went to Lower Brule last week and two  
25 councilmen, chiefs, they speak about this railroad

1 rights-of-way, land issues. Down the line they talk pretty  
2 good, and one of them just walked in over here, Holy Rock, and  
3 Red Cloud. So one of our treaty boys is Freemont Fallis and  
4 over there they are with them. We were doing all right. We  
5 find out a lot of things as they explained. Pretty soon they  
6 call us Indian Tribes. Well, that's where we got messed up.

7 So Chief Red Cloud, he said there's two Tribes,  
8 so I don't know which we belong. Over here Holy Rock stood  
9 up, No, we are all tribe, just like my cousin over there  
10 explained. So the only issue, one of our young girls asked  
11 the attorney about this draft agenda, what do you think about  
12 it. A lot of you don't want that railroad track. Yes, we  
13 got a railroad track nine miles from here. It's all torn  
14 apart, and I think Holy Rock explained ten years the contract  
15 expires, so they tear it up all where it goes along close to  
16 the Indian reservation; that's what happened around here.

17 Just a question, to me I listen. The question is  
18 how you want it. Do you want it or if you don't want it.  
19 These are the things. I was born thirty-two in sixty-eight,  
20 and I understand a lot of things, from my elders, from my  
21 grandpas and grandmas. I listened to them. I never talked  
22 back to them. These are the issues they explain. Many years  
23 back one of the ladies said they brought a paper every day  
24 when they have a meeting session like this, which is true.  
25 These are the laws of the Washington, D.C. they got over

1 there, BIA, DM&E, that's where they get this copies.

2 As a Mni Wiconi I understand a lot of things  
3 from the water issue and the land. These are the things, but  
4 to me one of you mentioned Daschle and Senators and on down  
5 the line. These are the ones we supposed to battle at, not  
6 the important person that brought the message here. I'm not  
7 for them, but this is the message they brought from  
8 Washington, D.C.. That's where the -- (speaking Lakota) --  
9 the United States Senators and the President, they make a  
10 treaty. I'm glad.

11 A lot of you Pine Ridge people travel over  
12 there. We never travel to Washington, D.C. from our Rosebud  
13 Reservation. There's only about two, three people. They  
14 never bring the message back. I hope you bring your message  
15 back to your reservations. To tell you the truth, we at  
16 Rosebud people, we don't know what's going on in Washington  
17 right now. Somebody mentioned about an United States  
18 president.

19 This is dangerous. My relatives, if we don't  
20 wake up the Senators, it's going to be worse. Our children  
21 will be lost. Our education will be cut. These are the  
22 things our Senators of the United States that each state that  
23 we have, I know Pine Ridge got about two, three. Rosebud, we  
24 got about two, three, four of them. We never talk to them.  
25 We never go up there. We never delegate up there. I don't

1 know about you other reservations.

2 These are the ones that are supposed to fight  
3 for us and the treaty nation, this is where the treaty  
4 belongs. They have been saying that so in our open Rosebud  
5 reservation, we only got about four boys that belong in that  
6 treaty. We invite everyone to sit down with them and explain  
7 what's happening in our land issues, all these issues are  
8 common. Everybody is busy. So these are the things I just  
9 want to remind you. So the question is, you want these to  
10 carry on? Or if you don't want it, make a comment. This is  
11 what it means.

12 (Speaking in Lakota.)

13 Ten years ago, Mr. Holy Rock explained, it's  
14 gone. The government already pulled out. State already  
15 pulled out. I know he explained it right. I believe him.  
16 These are the things I learn, and I was really proud of my  
17 two chiefs Red Cloud and Holy Rock. They explain it to the  
18 Lower Brule Reservation. I am proud that they explain. They  
19 give us a bible, so we brought it back and we disagreed on a  
20 lot of things, so they just mark it off. This is the way it's  
21 supposed to be.

22 We don't have to argue about it. Our main ones  
23 is Senators that they are going to take the message, when the  
24 Senators all get together swear it in, but the United States  
25 president part, they are battling, so they might get rid of

1 us Red Nation out on our reservations. They are battling  
2 among themselves. And I listen to the radio and I was sad.  
3 Yes, I got a lot of grandchildren, teenagers and great  
4 grandchildren, so I have to think about that.

5 So these are the things. The question is you  
6 want this or not. Just write your comment and give it to  
7 them. And write your name, that's all they want. And the  
8 Forest Service, we got some foresters in our reservation.  
9 They take care of everything, the land, animals, bands, you  
10 name it. Each reservation, we got a lot of things on issues  
11 like that; foresters, game warden, you name it, land and  
12 natural -- land operation.

13 These are the ones, we are supposed to sit down  
14 before we go to the delegate like this, but before -- I'm glad  
15 my Mni Wiconi organizations are pretty well educated and write  
16 it down. Hey, you write it down. This is what the main  
17 subject is and it explains in here, in the big book over  
18 here.

19 So that's the only question if we don't do that,  
20 we're going to be sitting here another three, four days  
21 arguing and arguing who's got the power and all that. Each  
22 reservation, we delegate about this issue. We support them.  
23 This issue is for the Pine Ridge, Wyoming, Montana, we support  
24 other ones. Minnesota, yes, across the river there stand by  
25 and come over here, too.

1 So that's what we want to do. All they ask you  
2 is you like this? If you don't like it, write a comment and  
3 we'll take it back. So it's not a cue. So these are the  
4 explanations I heard last week, and I was happy and came home  
5 and I told them, all right, it's up to the reservation people,  
6 if they don't want it, just write a comment. We don't want  
7 that. We don't want that.

8 Because over here, nine miles from here that  
9 railroad track disappeared. We used to have a good railroad  
10 track, so we used to hitchhike from over here to Kilgore,  
11 down to Chadron. Now it's gone so we hitchhike on the road.  
12 That's why I end up in a wheelchair.

13 (Speaking in Lakota.)

14 So again, my relatives, I want to thank you very  
15 much and all the visiting friends that you come a long ways.  
16 I know it's hard to travel around. So I want to thank that  
17 superintendent of Lower Brule again for coming here.

18 (Speaking in Lakota.)

19 MS. WENDY SCHMITZER: May I ask the group a  
20 question, please? Is this a good time to take a break or  
21 shall we continue on with our discussions? Continue on?

22 MS. CHARMAINE WHITE FACE: Mr. Johnson Holy Rock  
23 would like to address you.

24 MR. JOHNSON HOLY ROCK: Thank you. I'm sorry, I  
25 apologize for arriving here late. I was supposed to have been

1 here earlier. My name is Johnson Holy Rock from Pine Ridge  
2 Indian Reservation, and I've always been -- I've never left  
3 Indian country except during the Second World War.

4 Now in relation to this issue we seem to be  
5 arguing on, the first time I really had an opportunity to --  
6 or I thought I did, I went to Lower Brule because there was  
7 desire about the issue and desire to arrive at some decision  
8 for or against the issue that is going to affect Indian  
9 country.

10 Although present day there are states, 48 -- 50  
11 altogether including Alaska and Hawaii, but the issue here  
12 that I have suddenly became aware was very -- to me was a  
13 very insurmountable issue that was being placed before the  
14 Indian people. It was not too long ago, about, we told our  
15 stories to our grandchildren by word and pictures. Indian  
16 people are oral oriented people. That is why the government  
17 has tried so hard to civilize us by teaching us their tongue  
18 through the school system.

19 But even though they did, and they have done --  
20 I don't know how to say a credible job, but with this  
21 particular document, this EIS, I received three volumes of it  
22 and I was pretty confident that I would have some answers in  
23 Lower Brule, and surprise, they came on another document that  
24 I had no idea existed. It was the last one, the executive  
25 summary of an EIS. But previous to it, as I found out

1 earlier, there are seven or eight volumes.

2 And I looked at our people, all 150 years the  
3 span has taken place. We still have difficulty understanding  
4 the English language, especially in the printed form, because  
5 the way the word composition are printed is like trying to  
6 learn Greek.

7 And it was kind of interesting, recently they  
8 had a meeting at Hot Springs and one of the ranchers or  
9 farmers who appeared there, and I was surprised that he was  
10 so meticulous in his effort to understand the EIS, and it  
11 seemed like he had all the volumes. I don't know how he  
12 acquired it. And he estimated it would take 66 pages to be  
13 read daily for 900 -- or for 92 days in order to halfway have  
14 a smidgen of an understanding because of the complicated  
15 language incorporated.

16 And looking at the volumes I had, I can well  
17 understand -- and he was a white man. He should have been  
18 well versed in his own language, while we find ourselves out  
19 in left field. I do -- I have to read it over and over and  
20 over again before I can have a faint understanding of what is  
21 desired by the printed document, and that is one reason why  
22 after my trip to Lower Brule and my return, I realize that it  
23 was almost impossible for us even at this setting, and we  
24 would have to have the best presenters, those have been used  
25 in putting this EIS together, and even then we would have

1 difficulty understanding.

2 Now I stand here before you as a descendant of a  
3 band of the Sioux Nation, mine being the Oglala, and I speak  
4 for the elders, and the very young would have no idea what is  
5 happening, and I would dare say that even some of our educated  
6 members sitting here would have a somewhat difficult time to  
7 really understand.

8 I stand here on treaty grounds. I have here  
9 copies of the 1851 executive treaty, made and concluded at  
10 Horse Creek in Southern Nebraska, along the Platte. It's  
11 referred to as having taken place in Fort Laramie, but the  
12 preliminary action took place along the Platte River, down  
13 in the vicinity of what is now known as Scottsbluff,  
14 territorially we covered Platte and area. And those  
15 treaties represent the contract, supposedly international in  
16 nature.

17 But somehow or another, as I said before, it was  
18 hard to understand the English language that was copied by the  
19 present citizens of the United States. And it would be well  
20 if you can -- I will submit these to you. You don't have to  
21 read 66 pages a day, you can understand it in the short term,  
22 and in contrast to these two documents that lay the foundation  
23 that we are at today, and previously in Lower Brule, it is  
24 intermingled with state lines.

25 And by an act of Congress in 1889 it watered down

1 the Sioux Nation to the present reservation as now existing in  
2 South Dakota and North Dakota, part of North Dakota. But the  
3 Tribes that were involved in 1851 included not only the Sioux  
4 Tribe, but the Arapahoes, the Crow, the Cheyenne, and I think  
5 it was the Black Feet.

6 Now the 1851 treaty addressed right-of-way. The  
7 military wanted a road to cross Indian country, numerous  
8 different Tribes and nations, and they had to get that  
9 agreement, which they did. The Tribes were enticed to  
10 agreeing by being promised \$50,000 a year. An original  
11 agreement called for 50 years, but when the commissioners  
12 acquired all the signatures of the various nations and  
13 Tribes, they amended it and reduced it to ten years.

14 But then the commissioners failed to follow up  
15 and bring it back out to the various bands, Tribes and  
16 nations, to get their ratification of the amendment. It's a  
17 procedure, a practice internationally, you just don't amend  
18 someone's reasonable agreement and try to go on with it. It  
19 has to be ratified.

20 Unfortunately they waited for six years before  
21 they came back out here and approach each nation the Sioux,  
22 the Crow, Cheyenne, Arapaho and got them all to sign, ratify  
23 separately, and I don't know how it was done, but I am tended  
24 to believe that they told each tribe that the other Tribes  
25 had already signed. All they needed was theirs, and probably

1 enticed them to sign it. But then before it was 50 years and  
2 then it was to ten, and when they got to the signatures there  
3 was only four years left, a violation right away. It's a long  
4 story, but you have an idea.

5 I would like to leave you with this and perhaps  
6 tomorrow if Mr. Fallis can bring his map so you can see from  
7 where we're coming from and that way the EIS, which covers --  
8 as some of you will notice it bypassed reservations pretty  
9 much, the present ones, but it's crossing treaty land. The  
10 question of should there be a right-of-way negotiation.  
11 Should there be some respect shown, and even offered.

12 Because in the long and short of it is that it's  
13 costing on the earth. The tracks will be laid. The grounds  
14 will be torn up. The rails will be laid. It's going to  
15 affect the earth structure, and it's going to cross many  
16 different types of land, forest land, Grasslands, probably  
17 even bordering established towns, cities, municipalities, and  
18 in the course of it also the groundwater, the streams that  
19 the railroad will cross is almost for certain an amount of  
20 contamination is going to take place. It has to. And may  
21 later affect groundwater under the ground.

22 And I would like to also point out that up to  
23 this time the Sioux Nation has not really formally claimed  
24 all their water rights, which it should have, but many of you  
25 don't understand what water rights is about, and the EIS that

1 addressed the activity that's going to be addressed is going  
2 to affect water surface and ground, not to overlook the fact  
3 that the air, the air we breathe, that we breathe in and  
4 breathe out.  
5 Now it's interesting, I made a concentrated  
6 study of the air, and it never dawned on me that there was  
7 such an important thing, like the man that determined that  
8 we would have to read 66 pages a day for 92 days before we  
9 can understand halfway or a smidgen of it. I found out that  
10 the air, 71 or 2 percent nitrogen, 21 percent oxygen and the  
11 rest was helium, carbon dioxide and something referred to as  
12 argon. It's a blended air we're breathing, and this argon is  
13 identified as a nuclear number identity of 18.  
14 So we're breathing some kind of an already  
15 perhaps contaminated air. But of course the Creator decide  
16 that each formula can't be questioned, I suppose, not by mere  
17 man. But all these -- the trains will be burning fuel and  
18 these municipalities and cities that will be burning fossil  
19 fuel. The coal that's going to be hauled to generate more  
20 electricity is going to add to the contamination of the air.  
21 Now once it contaminates the highest point of  
22 issue up in the stratosphere, it stays there. It don't go no  
23 place, because there's no air beyond that to carry it  
24 elsewhere. So when all it contaminates, hits the top where  
25 else can it go. It comes back down.

1 And we all hear about global warming; that's what  
2 it is. That's what it's going to be. We're living in a  
3 bubble. So those -- learning from those, I take a very dim  
4 view of this issue, because even if the scientific world  
5 shares that the global warming is caused by contaminants and  
6 we choose to haul some more and burn more and more, while  
7 we're generating electricity, we'll all be choking to death.  
8 But that's not for me to arrive at, that's for scientists.  
9 But what little I learned in a short time that  
10 I concentrated, like that fellow south of Hot Springs, I  
11 learned quickly, but of course I didn't have to research 66  
12 pages, I took about a paragraph. So I think this issue has  
13 to be totally analyzed at this setting. If we can't, then  
14 there's only one alternative existing before the 5th of  
15 January, and that's to have multiple gatherings like this in  
16 order to come to a clear understanding of what is involved.  
17 So I don't know how much time I'm being allowed  
18 here, but I think if nothing else can suffice out of this,  
19 then we just have to say no. I mean we can't live with that  
20 in a gray area that is going to affect future generations, and  
21 not only Lakota, but everybody. Everybody. Nobody is going  
22 to get out of it. I suddenly realized how fragile we exist.  
23 And recalling this issue, I don't think I can  
24 stand to read 66 pages a day. I do well to read one or two,  
25 and even then I don't quite understand, and I have to keep

1 going over and over and over again before I have a faint idea  
2 of what it's all about, because I'm Lakota. I'm basically  
3 oral oriented. Reading printed word is a painful process.  
4 I may sound halfway civilized, but I really am  
5 not. Basically because it takes me so much longer to  
6 comprehend something, especially when it's written in  
7 technical language, and I hate languages that are derived to  
8 address technology, because it's done by letters rather than  
9 words, and you have to guess what those words mean. You  
10 practically have to have several volumes or different versions  
11 of a dictionary in order to have an understanding.  
12 So I'm going to sleep on this and I'll probably  
13 be back and annoy your eardrums again. Thank you.  
14 MS. WENDY SCHMITZER: This gentleman over here I  
15 think had something to say. You would like to pass? Okay.  
16 I just acknowledged him so -- and then we'll go  
17 back to you next.  
18 MR. OLIVER RED CLOUD: (Speaking in Lakota.)  
19 This plan is already set and every time I go to  
20 this meeting I don't see no man sitting there, all this ladies  
21 like her, her, all ladies always in meetings. I never see no  
22 man. Back in '88 -- '98 when these first signed started, we  
23 made some resolution. We made three resolution, we oppose  
24 it. We against it. We sent it to Washington, all are  
25 Indians office, but still look where they are at, still

1 pushing, even though we say no, they are going to go through  
2 with it.  
3 So now today how are we going to stop them that's  
4 the thing they are looking for consent on 51 and they try to  
5 go through that '71 and they got lawyers, they got attorneys  
6 and who we got, we got nobody, just treaty rights, we talk.  
7 But I'm looking at how are we going to do it. We could talk  
8 all we want here, but it's already set.  
9 So right now which law, how are we going to stop  
10 this? They are going to go through with it anyway. That's  
11 why they are working, because they had Daschle, Janklow, all  
12 down the line. They are all set on money-wise, see, so how  
13 are you going to stop them? That's the thing. We could talk  
14 all we want, but we have to look for a law that is going to  
15 stop it.  
16 But I myself, I'm going to -- I myself, I'm going  
17 to look at it this way, January 5th is the deadline, we have  
18 to extend that, and then they have to listen to us. Because  
19 in past years, over 132 years, the 68 Treaty or 51 that comes  
20 today in 2000, and we never go into court and never see. We  
21 never go into court. All the time we went to court is at  
22 Black Hills and offset was -- \$92 million was offset in 51,  
23 but we beat that because that's a treaty rights. And after  
24 that we never go back to the court again.  
25 Now, today we had to go back to the court again

1 on this one here, because we have to use article one because  
2 push out on the side and that's the law, that's a natural  
3 law. So many of these on the treaty, you could understand  
4 that. That's why hurry up and they want to get through before  
5 people are starting to see what's going on.

6 I'm sitting here listening to them ladies talk.  
7 That's the way they work. They could talk. They could say,  
8 oh, oh, but it's already set. It's already set. That's the  
9 way they work. I been in this game here a long time. I know  
10 how these people here work. They use ladies here to sit  
11 back, so they want to take the report back, but they are  
12 going to go through with it. So now we have to extend this  
13 here 5th. Where do they get the authority? Where do they  
14 get the consent to do all these.

15 Well, we got to show ourselves who we are. We  
16 never did before, but we could do it again. We tried two  
17 times. We won. And this one here, the Black Hills bill  
18 still stands because a lot of things but in 51. See, right  
19 now they are using treaty land and article 51 -- yeah, 51,  
20 treaty land is in your reservation, come through in '89 and  
21 treaty land 51 is Indian territory. We still have voice  
22 because we never settled. We never settled Black Hills. We  
23 still own them treaty land with you. They still keep pushing  
24 us. Most of you know your treaty; that's the way they work  
25 it today.

1 So I myself. They got to extend this. We have  
2 to pass a resolution, and we got to tell them they have to  
3 extend. We have to get an attorney and we got to get in  
4 there. We have no attorney, how are we going to do it? They  
5 have their attorney down on the other side, but we don't have  
6 any. So we got to get an attorney and extend this or go to  
7 court or Congress. We could do it. We are people, too, in  
8 this country. We was here before, before their people come.

9 They promised that we are going to stay in  
10 United States, so later Indian treaty we won't bother you.  
11 We put that in '71, look what they are doing. They violate  
12 our treaty. Yeah, all nation, 50 nation of congressmen,  
13 that's why they try to get anything they try to get. You got  
14 to say a lot of things.

15 I listen. I work with these people. I work with  
16 these kind of people. I went to Congress several times. I  
17 went to Black Hills hearings, both of them. I know how they  
18 work. I really don't trust them. I'm sorry, I don't trust  
19 you, because there's things under there, bring it out. He's  
20 going to hurt people, like some of these ladies here talk so  
21 that's you have to --

22 (Speaking in Lakota.)

23 Who give consent to say this here? Where is  
24 ours? See, you got to wake up. We got to speak up to the  
25 Congress, not these people here. They sound really big. They

1 going to get a foot hold and, good-bye, once they get in 51,  
2 that's what it is, Indian territory and treaty land. And they  
3 use that homestead law, and they could knock that out easily.  
4 They got state law, or whatever, so they could do that.

5 But remember you're a nation. They put us under  
6 the United States Constitution here and there. They forgot  
7 our treaty here; that's why I try to explain to our younger  
8 people. So talk about laws, how are we going to do it? I  
9 could sit here and talk all day, but I'm looking for the law,  
10 what they say, how are we going to do this in 51? How are we  
11 going to do this 71? You're still coming on this side, you  
12 know; there's a lot of things that have to be looked at.

13 (Speaking in Lakota.)

14 MS. CLAIR GREEN: Thank you so much. I wanted to  
15 check and see if people want any kind of a break. Should we  
16 take a ten minute break and come back; would that be good.

17 MR. AMBROSE MCBRIDE: I would like to say  
18 something. My English name is Ambrose McBride. I'm with the  
19 Crow Creek Sioux Indian Reservation. I'm the tree I  
20 representative. I've been sitting here listening your side,  
21 our side, and Mr. Red Cloud has just spoken on some good  
22 things, that we have to unite.

23 And I know you are not really educated in what --  
24 since the 1800s, what has happened to us, the Great Sioux  
25 Nation, broken up by the 1889 Act. And I wanted to go back a

1 few sheets up there that you had on the Surface Transportation  
2 Board, and the lawyer, female lawyer that spoke on it.

3 I know it's was created by the president, but  
4 the only thing I'm really worried and an independent  
5 organization the three members. They had nobody to --  
6 whatever they do it's up to the president. The president  
7 probably say, it's all right because they are Indians. And  
8 they have no policy, no kind of policy to work with us Indian  
9 people, the Surface Transportation Board, the decision makers,  
10 as the lawyer has said here today.

11 And somehow I know you are all from the bottom of  
12 the totem pole that have come here to meet with us people, but  
13 I hope you can take some answers back that we are disagreeing  
14 on that because we have the 1851 treaty and the 1868, and say  
15 we got to bring them up, bring them two very important

16 articles out, because they are very important to us people.  
17 We are very -- they are very important. And if  
18 that is not brought up and you just make a decision, say we  
19 went down there, we know -- I know how you people act. When  
20 you come down here, you say we met with the Indian people.  
21 Now some of them disagreed, some of them agreed, but let's  
22 just go on. We'll get that railroad built. Now that can't be  
23 done. We came to plead with you.

24 It's really violating our treaties, and somewhere  
25 down the line somebody that has the position like you people

1 have, you have to say, Them people that we met with down there  
2 in Rosebud have treaty agreements with the  
3 government-to-government relationship as it was explained  
4 here, with the United States of America, and we agreed with  
5 them.

6 We went from 1851 down to boundaries that said  
7 we own 60 million acres. Then pretty soon a few more years  
8 down the line they created the 1868 treaties and went down  
9 to 48 million. But then that wasn't enough, they kept  
10 coming with homestead acts and other various laws that just  
11 slowly take our land. And now they have come down with  
12 mitigation one, mitigation two, and they have got some Tribes  
13 on their side, Mr. Daschle -- or Senator Daschle and Governor  
14 Janklow.

15 And now they are doing something, they are going  
16 to try to take our river next, some of our land that the  
17 Corps of Engineers has taken. I very don't trust the Corps  
18 of Engineers. I do not trust them at all. They have really  
19 lied to us people since they started the two dams that affect  
20 my reservation, the Ft. Randall Dam and then the Big Bend,  
21 which was created right on our reservation down there. And  
22 now they have us all fighting now each other.

23 I know a lot of the people at Lower Brule  
24 disagreed with the Tribal council, but in 1934 when they  
25 passed the Indian Reorganization Act it degraded these Tribal

1 councils, and now they have made their agreements that somehow  
2 that violated our treaties, our treaty rights.

3 So that's all I wanted to say is that I don't  
4 know why they don't have a policy, Surface Transportation  
5 Board, to meet with us, and I think the people here, we've  
6 got to get together and come up with a resolution to either  
7 go against us or agree with it. Thank you.

8 MS. CLAIR GREEN: I was going to call for a ten  
9 minute break because there are some people that need a break.  
10 So could we do a ten minute break and then come back and  
11 continue with this?

12 UNIDENTIFIED SPEAKER: I have a short question.  
13 Will Surface Transportation Board honor the Lakota decision  
14 that they make that they recommend to you today or at the end  
15 of this meeting?

16 MS. CLAIR GREEN: The question was will the  
17 Surface Transportation Board honor --

18 UNIDENTIFIED SPEAKER: The Lakota decision made  
19 at the end of this meeting? If they ask you or give you a  
20 decision, will they honor that.

21 MS. VICTORIA RUTSON: I will make sure that the  
22 Surface Transportation Board knows of your thoughts, concerns  
23 and your decisions. I'll make sure that that information is  
24 in front of them before they make their final decision, that I  
25 can promise you.

1 MS. CLAIR GREEN: Shall we take a break for ten  
2 minutes?

3 (A recess was taken at this time.)

4 MS. CLAIR GREEN: I think we could start up  
5 again, if everybody is ready to. We're still minus some  
6 people, but I'm sure they will come back.

7 UNIDENTIFIED SPEAKER: I have some questions if  
8 you're ready.

9 MS. CLAIR GREEN: There are a few people here  
10 that have to leave this afternoon, and I thought that it  
11 would be only fair to ask if they wanted to speak. I think  
12 they do, some of them, because they won't be here throughout  
13 the whole meeting, if that would be all right with everyone.

14 MR. KEN PARR: That gentleman has tried three  
15 times to speak.

16 MS. CLAIR GREEN: Jeff, would you like to go  
17 first and when more people come in, if anyone is leaving.

18 MR. JEFF CADOTTE: Jeff Cadotte. The first  
19 question I got for Wendy, you said earlier that there was no  
20 decisions made, okay, however what did you mean by that? What  
21 decisions are you talking about, under options or --

22 MS. WENDY SCHMITZER: What I mean is there hasn't  
23 been any decision on whether or not the project should be  
24 granted an easement on the Forest Service lands. All we've  
25 done is basically identify a preferred alternative at this

1 point, that we have enough information, about if we have a  
2 project, this is what we could live with, and we identified  
3 that early in the process, so that people can comment and let  
4 us know what they think about it. But that doesn't mean there  
5 is any decision made, because we have made no decisions  
6 whatsoever.

7 UNIDENTIFIED SPEAKER: I was thinking about the  
8 options and Option D according to EIS, Option D is out  
9 already, right.

10 MS. WENDY SCHMITZER: Alternative D is what  
11 you're talking about? Yes, that is an alternative that we are  
12 not going to look into any further depth on.

13 MR. JEFF CADOTTE: Okay. One question about okay  
14 resources. There's 15 of them in there, right, and Option B  
15 or Alternative B, okay, I'll say, there's only two where  
16 there's no impact on about, right, two of them with no impact  
17 of the 15 resources?

18 MS. WENDY SCHMITZER: I think -- I don't think  
19 there's any alternative that doesn't have an impact on any of  
20 the resources.

21 MR. JEFF CADOTTE: I'm saying out of those 15  
22 resources, Alternative B there's two there with no impact out  
23 of 15. Then you go over to C and C only has four, right, out  
24 of 15?

25 MS. WENDY SCHMITZER: I see, when you're looking

1 at the significance level of the impact there are two.

2 MR. JEFF CADOTTE: Out of 15, there are four and  
3 two out of the other. That don't look very good for any of  
4 the -- B or C.

5 MS. WENDY SCHMITZER: And you raise a good point  
6 there is no alternative that is going to be perfect.

7 MR. JEFF CADOTTE: Victoria, this question, what  
8 did you guys mean if you mitigate any one of those  
9 alternatives, and then it says if you mitigate still it's not  
10 going to come out to be anything positive on Alternative B or  
11 C?

12 MS. VICTORIA RUTSON: That's right. There's  
13 significant impacts, and some of those impacts can't be  
14 mitigated. Some of them can be, possibly, but some  
15 significant impacts can't be mitigated.

16 MR. JEFF CADOTTE: How long is it going to  
17 mitigate? How would you mitigate those, to who and --

18 MS. VICTORIA RUTSON: We suggested -- so far we  
19 came up with 104 mitigation measures, ideas that we thought  
20 may help to mitigate some of the potential impacts.

21 For example, if this railroad were to be built,  
22 when the construction occurs there could be erosion, you know,  
23 some of the land eroding into the waterways. In order to slow  
24 that down or possibly stop it, it's possible that we would  
25 require the railroad to put hay bales or riprap along to hold

1 the soil in place during construction. That's one mitigation  
2 measure. And all that would mitigate is some erosion into  
3 streams during construction.

4 MR. JEFF CADOTTE: Still, with mitigation and  
5 these are alternatives, either way there's still -- it ain't  
6 going to -- there's still going to be some negative things in  
7 there.

8 MS. VICTORIA RUTSON: That's exactly right.  
9 That's exactly right.

10 MR. JEFF CADOTTE: What's -- how is that going to  
11 be taken care of.

12 MS. VICTORIA RUTSON: What we do is tell the  
13 decision maker that there are going to be significant things,  
14 adverse things, bad things. You decision makers, you  
15 understand that before you make your decision. You know that  
16 this is what's going to happen if you make that decision.

17 MR. JEFF CADOTTE: Now where there's no impact on  
18 some of these, if you look down to cultural resources,  
19 there's significant impact on both of them.

20 MS. VICTORIA RUTSON: That's exactly right.

21 MR. JEFF CADOTTE: On all of the main ones  
22 there's no; no ways, there is none there.

23 MS. VICTORIA RUTSON: No mitigation, you mean?

24 MR. JEFF CADOTTE: No impact on those areas, like  
25 noise, okay, what's more important, noise or cultural

1 resources?

2 MS. VICTORIA RUTSON: It's important that the  
3 decision maker no what all the bad things are that could  
4 happen. The law requires that the decision maker make an  
5 informed decision, which means it's our job to make sure that  
6 they understand everything that could happen, all the bad  
7 things and all the good things, if there are good things, but  
8 make sure all the information is in front of those decision  
9 makers before they make a decision. So if there's impacts to  
10 noise, to cultural resources, to safety, to aesthetics,  
11 everything.

12 MR. JEFF CADOTTE: Well, every one of those  
13 things listed will have impact on every one of them.

14 MS. VICTORIA RUTSON: That's right.

15 MR. JEFF CADOTTE: How about special interest  
16 areas; what do you plan on doing about that, if that was to  
17 go.

18 MS. VICTORIA RUTSON: That's a Forest Service  
19 issue, so I'll not to pass the buck but --

20 MS. WENDY SCHMITZER: She passed the buck.  
21 Special interest areas, let me explain, those are under the  
22 National Grasslands planning revision that are being done  
23 right now, and those special interest areas are designated  
24 specifically, because there are important qualities and values  
25 that we want to set aside and protect.

1 And your question is, well, if that's the case,  
2 then why would you even consider letting a railroad go through  
3 there, and it's a very valid point. I will give you an  
4 example.

5 UNIDENTIFIED SPEAKER: Fossils there.

6 MS. WENDY SCHMITZER: That's what I want to talk  
7 about, a paleontological site. Under the new revised  
8 Grasslands plan, when we looked at the management  
9 prescription for that special interest area, and what a  
10 management prescription does is it's like a doctor's  
11 prescription where you give yourself medicine. It tells us  
12 how to manage the land.

13 And in that management prescription for the  
14 special interest area we prescribed, so to speak, a set-aside  
15 area for scientific knowledge about the paleontological  
16 resource. We know that in this special interest area it has  
17 a very, very high rating, high probability of tremendous  
18 amounts of fossils being found and uncovered.

19 The reason why we would ever consider allowing  
20 anything to happen in that area is if the impacts to the  
21 resource area were mitigated by, for example, if the railroad  
22 goes through and in the excavation process they uncover  
23 something of a scientific value, the project has to stop until  
24 it's studied.

25 There's three miles in that special interest area

1 that the railroad wants to cut right through on the Thunder  
2 Basin National Grasslands, and here's what's going to happen.  
3 If they cut through and they excavate to put the track in and  
4 they come across a significant paleontological discovery, they  
5 stop. They have to stop construction at that point. They can  
6 no longer build in there until we excavate it and determine  
7 what the significance or value of that discovery is.

8 Now as the Forest Service we don't have the money  
9 that it takes to go in and explore and develop in that special  
10 interest area. We can't pay the paleontologists to go in and  
11 dig that area up for us. But if the railroad goes through and  
12 digs it up for us, because they are, by virtue of crossing the  
13 area, what we can do is say we want to know what's under  
14 there. If you find anything, then we're going to use this as  
15 a scientific bookmark, so to speak, and we're going to stop  
16 your project until we learn more about the discovery.

17 Now we will have paleontologists right through,  
18 all the way through construction, if it ever occurs in the  
19 special interest area, and they will have the authority and  
20 the ability to stop the project, construction, until that  
21 special scientific discovery is developed and excavated.

22 MR. JEFF CADOTTE: Okay, as far as anyplace where  
23 the Corps of Engineers comes, they dig there, they are going  
24 to the same ID plan or --

25 MS. WENDY SCHMITZER: They are going to use the

1 ID plan as a baseline for the decision permit, the 404  
2 permit. So there is a 404 permit Application submitted to the  
3 Army corps, and I'm speaking across the agency borders here  
4 but -- I'm not Army corps, but they are using this analysis as  
5 a basis for their decision making.

6 MR. JEFF CADOTTE: Okay, but if it's built, was  
7 there all -- Tribal monitors on the whole area all the way  
8 through? Was there someone telling besides non Indians saying  
9 what's a cultural site and what wasn't, on the whole area  
10 where the EIS covered.

11 MS. WENDY SCHMITZER: I don't think Dan is in the  
12 room, or is he. Dan Shinn? We have a question for you.

13 MR. DAN SHINN: Mr. Holy Rock had some questions,  
14 too.

15 MS. WENDY SCHMITZER: Would you ask your question  
16 again to this gentleman?

17 MR. JEFF CADOTTE: Yes. All the way across the  
18 land from Wyoming, all the way to where the EIS was done, was  
19 there Tribal monitors every inch of the way, someone that knew  
20 cultural resources?

21 MR. DAN SHINN: Every cultural resource mile that  
22 has been surveyed, and not all of them have been surveyed,  
23 I'll tell you that right now, because we don't have permission  
24 on some land, and areas we did not have permission, we did not  
25 survey and have not surveyed, yes, there was a monitor on it.

1 MR. JEFF CADOTTE: How can this EIS cover those  
2 lands that haven't been through with this EIS alone.

3 MR. DAN SHINN: At the outset of the EIS where we  
4 were looking at different alternatives, in early meetings the  
5 decision was made to look at what was known out there at this  
6 time, because they had to be looked at as equals if we had  
7 surveyed, say this one route out here, and discovered  
8 everything along this route, it would have skewed it against  
9 looking at these other three out here as alternatives.

10 So the decision was made to look at what was  
11 known at this time, but then put things in place that once an  
12 alternative was selected, then it had to be looked at very  
13 intensively for what was out there.

14 MR. JEFF CADOTTE: But that if you go through an  
15 area alternative, you have to go back and survey that part  
16 that wasn't surveyed.

17 MR. DAN SHINN: Amen.

18 MR. JEFF CADOTTE: What are you going to do with  
19 the EIS that wasn't done already; are you going to go through  
20 another two years for EIS? That's what you have to do,  
21 right?

22 MR. DAN SHINN: That is not the way that would  
23 work. Under the -- for the cultural resources, under Section  
24 106, there is a Programmatic Agreement that is also in this  
25 EIS that says what has to be done on that preferred

1 alternative. That Programmatic Agreement and Identification  
2 Plan very clearly outlines the steps that would have to be  
3 taken once this thing -- say it goes to a regular decision.  
4 Let's say it is approved, then all of these cultural resource  
5 things are still out there and still covered by this document  
6 called a Programmatic Agreement and an Identification Plan.  
7 They still have to be done. That is by signature of Federal  
8 agencies and the Tribes that are participating with that  
9 signature. It's there. It's signed. It has to be done  
10 according to law.

11 MR. JEFF CADOTTE: There will be Tribal monitors  
12 there, back on there.

13 MR. DAN SHINN: Yes, that is a requirement of  
14 this.

15 MR. JEFF CADOTTE: Who are the Tribal monitors  
16 that you guys got working with you for DM&E.

17 MR. DAN SHINN: Terry Gray has participated in  
18 this.

19 MR. TERRY GRAY: Shannon.

20 MR. DAN SHINN: Shannon has participated in it.  
21 Francis has been on the fringes of this one. He has worked  
22 with us on another project. We used another Brown.

23 MR. TERRY GRAY: Gary Braun.

24 MR. DAN SHINN: Gary Braun. I'm blanking out.  
25 Gene Blue Arm.

1 MR. TERRY GRAY: Cheyenne River. That Yankton  
2 lady.  
3 MR. DAN SHINN: I'm trying to think of her name.  
4 MR. TERRY GRAY: She's a Brave Heart.  
5 MS. CLAIR GREEN: Spotted Eagle.  
6 MR. DAN SHINN: Yes. There have been a number  
7 that worked with us, but we have not gone to the field without  
8 a tribe -- Jim Jones is another one. We have not gone to the  
9 field with an archeological survey that did not have a Tribal  
10 representative out there with that survey.  
11 MS. CLAIR GREEN: Could I add one thing to that?  
12 MR. JEFF CADOTTE: Yeah. Go ahead.  
13 MS. CLAIR GREEN: Tomorrow we had hoped to talk  
14 about the Programmatic Agreement and Identification Plan, as  
15 well as that Memorandum of Agreement that's also in draft.  
16 Those address monitoring during construction, which is a whole  
17 program that would have to be undertaken, and it gets to some  
18 of the questions that you are asking as to how things will be  
19 handled.  
20 MR. JEFF CADOTTE: I want to ask one more then,  
21 okay, in that EIS, why was there something in there about  
22 hazardous waste in this EIS? When I talked to President  
23 Schieffer myself, he said as far as he can envision there will  
24 be no hazardous wastes coming back. Why was it even mentioned  
25 in the EIS? So there must have been something in the future

1 planned for hazardous waste if it was in this EIS.  
2 MS. VICTORIA RUTSON: Under the National  
3 Environmental Policy Act we are required to analyze all  
4 reasonable and feasible impacts of the proposal. DM&E in its  
5 Application told us what they're hauling right now, which is a  
6 little bit of fertilizer, classified as a hazardous material,  
7 the rest is agricultural goods, bentonite, clay, kaolin clay,  
8 lumber and a lot of grains. Then under its proposal it wants  
9 to haul coal.  
10 So it's coal moving east and all the  
11 agricultural goods moving east, and then empty cars moving  
12 back west again. That's what DM&E intends, and that's what  
13 we've analyzed in the draft EIS. So there isn't anything,  
14 any proposal for hauling spent nuclear fuel or hazardous  
15 materials or hazardous waste, so that's why it's not analyzed  
16 in the EIS.  
17 Now we do have one condition, mitigating  
18 condition for the town of Red Shirt, if there was to be a  
19 spill. If this railroad project was approved and was built,  
20 and if an accident were to occur and the train came off the  
21 tracks, the train hauls fuel, that's what it needs to move,  
22 so the fuel may leak and we did require or recommend a  
23 condition that would require DM&E to train some citizens of  
24 Red Shirt in cleaning up and responding to a spill.  
25 So that's about the most we talked about

1 hazardous materials in the DEIS. We didn't talk about spent  
2 nuclear fuel or hazardous waste because that's not as what's  
3 proposed.  
4 MR. JEFF CADOTTE: Okay, that's it for now, until  
5 tomorrow when Schieffer is here, I guess.  
6 MR. TERRY GRAY: Some good questions.  
7 MR. HER MANY HORSES: Good afternoon. My name is  
8 Cleve Her Many Horses. I'm BIA superintendent for Lower Brule  
9 Agency, and I come here today and the next few days, I guess,  
10 to listen and learn and try to find out what's going on.  
11 But today I guess kind of it seem like Old Home  
12 week to me. I grew up here in Rosebud. I'm enrolled at Pine  
13 Ridge and many of my close relatives are Pine Ridge. I  
14 married into the Lower Brule Sioux Tribe, and my children are  
15 enrolled there. I have a great grandfather that came from  
16 Wakpala. I have Wakpala relatives from Wyoming. So everybody  
17 here, I have some kind of connection to.  
18 With that out of the way, I guess I made some  
19 notes and I see this all the time in my own agency, the agency  
20 I work for, but the way this thing is continuing, I guess I  
21 see that there's some classic mistakes happening, I guess. A  
22 lot of times the Tribes, the ones with Tribal members here  
23 today, they all came here. You know, they got the money  
24 somehow to come. You know, some of them probably even made  
25 the decision not to pay the light bill to come. You know,

1 those are the kind of decisions they make, and that's how  
2 committed -- how committed they are to seeing some of these  
3 processes through.  
4 But you know most government agencies, not all,  
5 some are getting better. A lot of the times we propose  
6 something, we say, okay, we're going to do this for the good  
7 of the people, you know. It's going to make our work better,  
8 easier. It will be less stress for the public. We put all  
9 that information together in a big package and we put it out  
10 there and tell the Tribes analyze this, you know, just like a  
11 big shocking blast.  
12 In the meantime the tribe is fighting on many  
13 fronts, you know. They are reacting to something IHS did.  
14 They are reacting to something the BIA did. They are  
15 reacting to something National Parks Service is doing, and  
16 they don't have people sitting back waiting for all these  
17 proposals.  
18 So I guess one mistake I see getting made is,  
19 you know, the information has been developed in the EIS,  
20 which is good. Tribes have the information now, but they are  
21 scrambling for bucks just to analyze that information that's  
22 out there, and scrambling for the people with the knowledge  
23 to analyze it.  
24 And on the part of the Surface Transportation  
25 Board and the cooperating agencies, in good nature you went

1 out and got this information and put it together and gave it  
2 to the Tribes, but frankly from the experience I had, you  
3 know, that information is suspect because they haven't gone  
4 through it themselves and they haven't developed it  
5 themselves.

6 I think what government agencies should do when  
7 there's proposals being made that will affect them or the  
8 public or Tribal members or their property, you know, there  
9 needs to be resources made available to them, whether it be  
10 money, you know, people with the technical knowledge to  
11 decipher some of this stuff, that needs to be made available  
12 to them also.

13 The other thing, and I think the level of  
14 frustration here today is good, you know. I'm glad you guys  
15 came these next few days to discuss this. But these meetings  
16 should have been happening, you know, a long time ago. And  
17 one thing, I was at the meeting at Lower Brule last week and  
18 some of the Gray Eagle Society members asked, you know, why  
19 don't we push this deadline back further, so we can analyze,  
20 we can develop, we can look at all this information.

21 So there's a good faith effort out there on  
22 their part to wanting to analyze all this information, and  
23 make a good decision, and as far as government agencies are  
24 concerned we're foreseeing those elected officials into a  
25 precarious position. You know, we're asking them to make a

1 decision on information that we develop for them, and we're  
2 asking them to make a decision within the next 90 days.

3 You know, this is a very big decision to be  
4 made. You know, I have my own personal thoughts on them, and  
5 those are my personal thoughts and, you know, Tribal members  
6 and Tribal governments need to develop their own and come  
7 forward then, you know, you would have something to go forward  
8 with and make a decision.

9 The other thing too is, yeah, you got Tribal  
10 monitors that go along the line and look at cultural  
11 resources, but on the decision end, you know, there should be  
12 included some Tribal governments or Tribal members, or however  
13 you want to do that. They need to be lead into the inner  
14 circle and help make the decisions also. You know, like I  
15 said, the government I work for, the agency I work for does  
16 the same thing. You know, we put the information out there  
17 and we say decipher it. This way they are in on the ground  
18 floor helping make decisions.

19 And then I guess I want to reiterate, you know,  
20 those resources need to be made available to Tribes. The BIA  
21 at some -- you know, some points in time they try to do that.  
22 The other agency I see doing that is BOR, like the Mni Wiconi,  
23 you know, they got a lot of the elderly groups together and  
24 brought them in on the decision making to some of the Mni  
25 Wiconi projects, and I think we need to take that lead and

1 make resources available to them so they could analyze all  
2 this information. That's all I had to say. Thank you.  
3 MR. FRANCIS BROWN: Good afternoon. My name is  
4 Francis Brown from Wyoming. I drove down here to see what was  
5 going on, and I learned a lot of things this morning -- or  
6 maybe this afternoon, from people talking here about different  
7 things and different -- but my main purpose for coming down  
8 here was to find out how far along the DM&E is, what they are  
9 going to do. I want to sit down with the government agency  
10 that's handling it while going across their land that they  
11 govern, I guess, and see if we can't all sit down and  
12 negotiate.

13 The one lady I heard say here that they are going  
14 to give them an easement on all the property. My goal here is  
15 to get an easement for the Tribes also on the same land, and  
16 all the cultural resources that are along the path. By the  
17 way, how wide is this corridor going to be?

18 MR. TERRY GRAY: A hundred foot, isn't it?

19 MR. SHANNON BROWN: A thousand feet, fifty feet,  
20 twenty-five feet or what?

21 MS. VICTORIA RUTSON: Generally it's two hundred  
22 feet, but it varies a bit, especially when you get into the  
23 towns, it's a bit narrower.

24 MR. SHANNON BROWN: Well, I'm not worried about  
25 the towns. They done screwed up all the cultural resources

1 around here. So what I'm concerned about is the new ground  
2 that this tract is going to go through, and I'm concerned  
3 about all the cultural resources there of my ancestors. All  
4 of us here, every tribe has rode that part of the country,  
5 and like they all say, we have resources there, and that's  
6 what my coming down here was for, to see how those cultural  
7 resources are going to be handled, so that we can sit down  
8 and talk about them.

9 You know, there's always a way to do it. You  
10 know, we can all go through the 106 process, but that takes  
11 quite a while to do it. But you know if that's what this  
12 comes to, that's what we may have to do, because the 106  
13 process takes you through every hoop.

14 Everybody has to jump through the hoop, but what  
15 I'm hoping for is that we can all sit down here and listen to  
16 what the Forest Service, DM&E is going to do, and when you  
17 do, we also -- all the Tribes here, that we also negotiate an  
18 easement on that same property for all the cultural  
19 resources. Thank you.

20 MS. CLAIRE GREEN: You're next.

21 UNIDENTIFIED SPEAKER: (Speaking in Lakota.)

22 At this time I would like to say good afternoon  
23 to each and every one of you. You know it's -- this is a  
24 very important thing. The news that we get, the media, you  
25 know, it's important that these public -- Elaine or somebody

1 who's working closely with this project to write about it.  
 2 If you're going to write about it, you might as well tell what  
 3 it is, the truth. And because, you know, I wrote, I got a  
 4 call the other day, and Pine Ridge was going to get a railroad  
 5 track. What for, you know, and I had no idea, because earlier  
 6 I consulted with Elaine and Clair on a route they showed me,  
 7 which was -- both of them was similar, you know.

8 I asked her by herself and they told me a route,  
 9 so I figured that's it. And then I heard another one so, you  
 10 know, today I was going to ask these two ladies, or whoever,  
 11 you know, to write an article and write what is actually being  
 12 said here, or what is actually going to happen, or where are  
 13 you, so we don't confuse the public, the general public.

14 I see Mr. Gray here knows quite a bit about it  
 15 but if he don't tell nobody, nobody knows, and I don't  
 16 because I just know the basic part. And so it's very  
 17 important that the media tells the whole thing, the right  
 18 thing, and I guess that's one of my concerns, you know,  
 19 because I don't want to answer something that is not going to  
 20 happen. Maybe these two could move mountains or walk on  
 21 water, I don't know, but it seems like that's what almost  
 22 happened, but it was not the truth, I guess, because nobody  
 23 does that, or that they had that much power, you know.

24 And I know, you know, this Oglala Sioux tribe  
 25 has been against this from the beginning. They have

1 resolutions opposing it, but they do have, Clair, you know,  
 2 they have this 1994 -- I was the one that went up there to  
 3 Washington, D.C. and got this consultation with President  
 4 Clinton in 1994, and I didn't know what was going on at the  
 5 time, but they had me singing for him, and so I guess I  
 6 played an important part at the time.

7 But this consultation is what I was looking at,  
 8 and I said that it has to be done, and this is what is  
 9 happening here. And the way that I'm looking at is they are  
 10 going to have signatory Tribes, a MOA signed by everybody, and  
 11 I guess the only question I got is that EIS is going to be  
 12 complete when they got all them, or are you just going to go  
 13 with whoever signs?

14 That is the question, because we have to ask  
 15 ourselves as people here. And I notice they have some  
 16 signatures in there, too, where they have Black Hills Sioux  
 17 Nation Council, Gray Eagle Society president, I noticed those  
 18 are all here, and those are -- I think those are the ones  
 19 that are targeting now. Once you say yes, the Tribal council  
 20 is going to have to go with you, because they listen most of  
 21 the time, and so this is what I'm looking at.

22 This is my thought, and I guess we need to  
 23 understand this, or are we going to have all the Tribes sign  
 24 before we go ahead with this project, or is it just going to  
 25 go with who -- in the back of our minds we know that the thing

1 is going to go ahead, and we have to be truthful about it. We  
 2 could say everything we want. We could say our treaties, but  
 3 in the past we say that and yet it still goes ahead, every  
 4 project.

5 And I hope this don't come down to the fact that  
 6 money talks, and it may be, so we got to be very careful on  
 7 how we go about this, because there's always a way to go  
 8 around some stuff, and this is what I'm looking at right now,  
 9 the way of analyzing this thing, that sometime they might do  
 10 away with some stuff in there that don't need to be in there.

11 But would you please tell me the question I asked  
 12 is do we have to have all the Tribes sign before you go ahead  
 13 with that, or are you going to go with the ones that sign?

14 MS. CLAIR GREEN: Are you talking about the MOA.

15 UNIDENTIFIED SPEAKER: Yes.

16 MS. CLAIR GREEN: The MOA was originally  
 17 developed at a consultation meeting, and it was developed by  
 18 several Tribal members from different Tribes, and that  
 19 question was discussed at length, and I believe that we heard  
 20 that the recommendation was that any independent tribe could  
 21 sign it, if they so chose to, that it would not be bound to  
 22 the group.

23 Again, if that's something that people would like  
 24 to comment on, I'm certain that, you know, that's why it's in  
 25 there for comment. But I believe, and Terry correct me if I'm

1 wrong, that the decision on signature was to enable people to  
 2 sign it independently.

3 MS. FAITH TAKEN ALIVE: I have a question, but  
 4 before I ask my question, I want to say this, my name is Faith  
 5 Taken Alive, and I'm a Hunkpapa and I have a great grandmother  
 6 who comes from Oglala country, and all of us sitting here,  
 7 we're all intermingled bands. But my father is a Hunkpapa, so  
 8 I have to go on the Hunkpapa side.

9 But the lands that DM&E intends to trespass  
 10 along belong to the Great Sioux Nation. We have not  
 11 surrendered this title to anyone, and everyone in here knows  
 12 that when you own a piece of land, regardless of whether you  
 13 sell, that top foot of land, the mineral rights, still belong  
 14 to the owner.

15 The coal in the Powder River Basin belongs to  
 16 us, belongs to every one of us sitting in here, and I didn't  
 17 give anybody any permission to take my coal, or anybody else's  
 18 coal that's sitting in this room that has title to that land  
 19 through the Great Sioux Nation. That's our coal.

20 My question is when DM&E rapes that piece of  
 21 mother earth to get that coal out, who is -- who are you  
 22 selling the Great Sioux Nation's coal to? Because I say no  
 23 easement. No easement for them until we have an answer, who  
 24 is benefiting from our coal. Surely it's not going to be us,  
 25 just like the gold.

1 And that lady in the purple jacket, I don't  
2 remember your name -- Wendy, you asked a question earlier, is  
3 DM&E the catalyst for our treaty fight. No, they are not the  
4 catalyst. Since 1974, the Black Hills Act, 26 years have gone  
5 by. There have been many, many issues, Hells Canyon, Bear  
6 Butte, Devils Tower, as you call it, the Missouri River and  
7 now DM&E.

8 But in making my statement I would like to thank  
9 you for having an open public hearing, because this is the  
10 first time that, to my recollection, and I'm 44 years old,  
11 that I have ever seen a Federal government agency abide by  
12 their policy of an open public meeting for the Tribes. I have  
13 grand children. I'm a grandmother, and because I am a  
14 grandmother, all the more I'm going to fight, harder and  
15 harder, and you're going to hear me, and you're going to see  
16 me throughout Indian country, more so than I have been in the  
17 last 25 years. But, no, DM&E is not the catalyst. We have --  
18 some us have been fighting since we were 16, 15 years old for  
19 our rights as Indian people.

20 But I would like an answer to my question today,  
21 who is going to benefit from our coal as the Great Sioux  
22 Nation because we are all, all of us entitled to some of the  
23 money that DM&E is getting for taking our coal.

24 MS. CLAIR GREEN: Let me respond very briefly to  
25 your question and maybe I can be helped out here by others.

1 DM&E is not digging out the coal. DM&E is simply a carrier,  
2 as they carry grain or other agricultural products. They are  
3 carrying coal.

4 Your point is well taken. The mines, I believe  
5 in Wyoming, and I could be misspeaking here, all have to  
6 obtain permits. Five years ago or so they all went and  
7 obtained permits to extract a great deal more coal. People  
8 have to -- or I think everyone in this room has to become  
9 more aware of the permitting process for some of these private  
10 sector mines and things that are actually mining the coal.

11 DM&E is not mining the coal. They are simply  
12 taking advantage of a product that's going to be taken out  
13 anyway and transporting it across their lines.

14 MS. FAITH TAKEN ALIVE: Who is the company mining  
15 the coal?

16 MS. CLAIR GREEN: There are several of them over  
17 in Wyoming. Do you know the names of them? I mean that is  
18 their business, to mine the coal, and then there are various  
19 and other sundry railroads that actually ship it. But the  
20 railroad is just a carrier, that's all.

21 MS. WENDY SCHMITZER: The Powder River Basin  
22 provides to the world and to the United States the most coal  
23 that can be taken from anyplace on the earth, and that is  
24 something that a lot of people don't understand. It is the  
25 richest, the largest coal deposit anywhere on the earth is in

1 the Powder River Basin, and that resource is now being  
2 extracted by the different companies that have permits from  
3 the U.S. Forest Service to develop the mineral and to provide  
4 it to utility markets to burn for energy, and it puts the  
5 Forest Service in sort of a double dilemma, because we have a  
6 multiple use policy.

7 We have an obligation to provide coal to the  
8 people of America, to the United States, to everyone. And  
9 it just so happens that the largest coal supply in the world  
10 is in Wyoming, in the Powder River Basin, and the land that  
11 we caretake. And all of that coal is being developed and  
12 mined under about five different special use permits.  
13 There's approximately five coal mines right now in the  
14 Powder River Basin that are producing the coal that DM&E  
15 wants to ship.

16 The other side of the story is that the coal --  
17 not only is it the largest supply of coal in the United  
18 States, but it also has the lowest sulphur content of all the  
19 coal. And what that means is when that coal is burned to  
20 produce energy, it is not as environmentally harmful as coal  
21 that is mined back east.

22 And because it's a low sulphur burning coal, the  
23 utility markets on the eastern side of the United States want  
24 to obtain this coal, so they can provide a better environment  
25 for the people that have to rely on coal in those utilities

1 in the eastern half of the world here within our United  
2 States.

3 The Powder River Basin is the only place that  
4 this low sulphur coal comes from. There is now a law that's  
5 being enacted with several of the elements of this law, and  
6 you know about this. It's the Clean Air Act, and the Clean  
7 Air Act had some amendments to it that started to become  
8 important in the year 2000, and what the intent of that law  
9 is was to reduce the amount of the emissions in our air. So  
10 what is being mined in the Powder River Basin and transported  
11 back to the eastern utilities to be used as an energy source  
12 is low sulphur coal.

13 And so the question is should this source not be  
14 available to people back east, should we not grant the  
15 easement, or do we need to look at a bigger picture and take  
16 it into account, the fact that a lower burning sulphur coal  
17 is good for everyone. And that's a hard decision to make.

18 But I don't know if that quite gets to your question.  
19 MS. FAITH TAKEN ALIVE: No, it doesn't, but  
20 you've brought to head a very relevant point, and the point  
21 is that we must as bands unify, because I see another fight  
22 in the forefront for us to take on, and that being the fight  
23 for our mineral rights. And I believe that we probably will  
24 be locking horns with the U.S. Forest Service, and other  
25 branches of the United States government, for granting

1 permission for five coal companies to take our coal.  
 2 That's our coal. That's our mineral right, and  
 3 we're heating the rest of the world while some of our  
 4 families sit at home waiting for their LEAP assistance while  
 5 they sit at home in cold homes, substandard HUD houses. So I  
 6 see another fight for us on the forefront. So stay focused,  
 7 people. We have to unite. Because there's a key word that  
 8 came out, DM&E is taking advantage. Well, aren't you sick  
 9 and tired of being taken advantage of, because I am. I am.

10 So take that message home to your people that we  
 11 must unite from this day forward. The bands have to come  
 12 together while remember the people sitting in their cold  
 13 homes waiting for propane for their pitiful little LEAP  
 14 assistance every year while our nation's coal heats the  
 15 world.

16 MS. WENDY SCHMITZER: May I add one thing to my  
 17 comment? I appreciate your comment. When I said we had  
 18 granted the permits, that is true. We do not have the right  
 19 to grant the permits for the coal. We only manage the ground  
 20 above the coal. Who actually gives the permit for the  
 21 extraction and who actually has the authority over the  
 22 mineral rights is the Bureau of Land Management, and the  
 23 Forest Service works with them to determine whether or not to  
 24 grant them access to allow somebody to dig the land and get  
 25 to the mineral right.

1 So we're not actually granting a permit for the  
 2 mineral right, we're granting a permit to the coal operators  
 3 to dig the earth, if that makes -- if that's any clearer. The  
 4 BLM provides the mineral right to grant.

5 MS. MARY JANE TIOKASIN: Mary Jane Tiokasin from  
 6 Standing Rock. I have -- over here, I have one last comment  
 7 to make before the day is over here. We have two abandoned  
 8 rails on Standing Rock, and they did away with land, ruined  
 9 it from going from South Dakota to North Dakota, because we  
 10 are in both states, and we got the Burlington going through  
 11 our Indian land through McLaughlin, South Dakota, from  
 12 Mobridge on up to McIntosh and on to Lemmon.

13 That's all Indian land and we can not find a  
 14 permit that was given, or an easement that was given to that  
 15 railroad, so we started a fight with the railroad about four  
 16 or five years ago in our community, because we said we needed  
 17 to see the land title, the easement, and they wouldn't answer  
 18 us. And so we said that they have to pay taxes on what they  
 19 are using, and we still can't find it.

20 We've asked and looked for years, but the  
 21 Burlington doesn't do anything. It goes through there with a  
 22 bunch of cars and comes back empty. When we left there was  
 23 about 14, 15 cars standing there empty, and they are a  
 24 hazard. They ruined land and everything and those two  
 25 abandoned railroads are -- you can't use that land and that's

1 across two states.

2 And many years ago when I was a young lady I had  
 3 a friend from Wyoming and I read in the paper where, you  
 4 know, Wyoming is oil country, too, and one day they hired an  
 5 engineer to help with the oil drilling and stuff, and he  
 6 found out that that one company was stealing oil from them to  
 7 another pipeline, and I'm wondering, maybe that's why they  
 8 put Native Americans on government agencies to work with  
 9 them.

10 I'm not saying you are, but I've lived many  
 11 years. I'm going to be 70 pretty soon, and I have a lot of  
 12 grandchildren. I have a lot of children, but I'm thinking  
 13 this is already cut and dried, but you know, it's going to  
 14 be worth the fight to keep DM&E from coming, because it  
 15 happened on our own reservation. Those railroads are no  
 16 good. I mean the land is ruined in North and South Dakota.  
 17 You can't grow anything on it; it's just dirty land now, and  
 18 who gets the money?

19 This is one of my questions. Who gets the money  
 20 from the coal that's taken out of Wyoming. Do the Tribes get  
 21 it or do they have to buy back their coal, just like we do our  
 22 own gold here. We have to buy back our own gold. We get no  
 23 benefits from the gold. But Homestake Mining Company is done  
 24 now. They have ruined the land. They polluted the waters.

25 And we have lived a long time when we've seen

1 this happen over the years, and now they are after our Great  
 2 Sioux Nation water. That water belongs to us, from Montana  
 3 down through Nebraska, and so I always say, they never bought  
 4 the river bed, so I don't know what they think they own.

5 Five big dams they built, but we don't get  
 6 anything from the electricity. We have to pay through the  
 7 nose for the electricity, and you should see the electricity  
 8 that comes out of those great big turbines.

9 And I'm really glad all these people are here  
 10 because, you know, in our organization we have these young  
 11 people. We have one going to -- he wants to learn about  
 12 Indian culture, what it's all about, and what the people are  
 13 fighting for, and he's going to be a lawyer so he is in his  
 14 second year at Cornell University. He's really a nice kid,  
 15 and he's learned a lot. He'll be back with us at Christmas,  
 16 and every summer he's home.

17 And so I hope that the government, the Federal  
 18 agencies will see the mistakes that they are making, and get  
 19 a hold of the Native Americans and a lot of the stuff that's  
 20 being done, because the treaties are being broken. They are  
 21 being broken all the time.

22 And Bill Clinton, I guess, is the only one that  
 23 sees our turmoil, trying to make it right. This is about the  
 24 second year he wrote that message to the people. But I'm  
 25 hoping that DM&E isn't built, because if they could see what

1 happened to us on the Standing Rock Indian Reservation with  
2 the Burlington, and those other two railroads that are  
3 abandoned, it is just messed up land for 200 feet, 24 acres.  
4 That's bad business, but that's all I have to say for today.  
5 Maybe tomorrow something else. Thank you.

6 MS. ELAINE QUIVER: I would like to say a few  
7 words, sitting here listening -- I'm Elaine Quiver from Pine  
8 Ridge, South Dakota, also with the Grey Eagle Society. One  
9 of the things that happened in the past was they had a treaty  
10 meeting in Rapid City, and at the time Mr. Red Cloud had a  
11 Sioux Nation Treaty Council meeting and so they passed a  
12 resolution to go against DM&E.

13 But at the time, really through the Federal  
14 Register that comes out, we noticed that there was going to  
15 be a railroad that was going to be built, and so at the last  
16 minute some of the elders got together and decided that we  
17 were going to see if we could walk along that railroad and  
18 through the corridor and ask where this railroad is coming  
19 from, and what plans they had.

20 And so we hurry up and wrote a resolution, and at  
21 the last minute it was snowing so hard, everybody was standing  
22 up and they were all trying to leave, and then I don't know  
23 how many of you were there, but that happened in Rapid City,  
24 we went and had the resolution written up and I gave it to  
25 Oliver and so he asked and at the last minute they passed

1 unanimously that we will monitor and we will look into where  
2 that railroad corridor was going to be, and we was going to  
3 ask and see what was on, and around the railroad plans.

4 So that happened and then we got involved, and  
5 as it went along -- Clair is part of this monitoring, and  
6 part of this thing that's going on with the Burlington --  
7 what's -- and so this is how we got involved, and I got to  
8 know a lot of the people that worked with the boards, the  
9 Grasslands and things that were used.

10 And so with that, a lot of the elderly went up  
11 and looked at different areas that happened. Well, one of  
12 the things that we did was like Oliver said, don't tell  
13 everybody where things are. There's a lot of artifacts.  
14 There's a lot of burial grounds. There's a lot of religious  
15 sensitivity along that railroad track, and there's a lot of  
16 cultural property along that track.

17 And those that monitored along that railroad  
18 know, and I'm not going to mention names because it kind of  
19 makes me feel like something that had to happen and we  
20 couldn't tell everyone. If you tell someone that there is an  
21 artifact someplace, before you know it it's gone. Next time  
22 you see it it will be in a museum. And these are some of the  
23 things that we don't want to see happen.

24 And so I think this is why and the EIS, where  
25 that too is sensitive, those things are really sensitive

1 where things are. So it's really hard to come out and say  
2 this is where it's happening. This is the type of artifacts  
3 and articles that are in it.

4 Especially when you write about artifacts, and  
5 how the progress is going in a newspaper. You're not only  
6 talking to a local area, you're putting it in a newspaper to  
7 reach here and overseas. And every household will know where  
8 the Indian artifacts and sensitivity parts are at. And it's  
9 kind of hard to tell someone because it makes you feel like  
10 you're going to sell your own products or someone to steal  
11 it. And this is why I guess it never was really explained to  
12 a lot of people.

13 We're waiting for the EIS to be finished, and  
14 I'm sure that each and every one of you Lakota Oyate will see  
15 where these things are and hopefully maybe someday we'll  
16 collect all our artifacts. Maybe someday we'll collect all  
17 of our remains that are scattered throughout Indian country.  
18 Maybe we should pursue an unknown Indian cemetery. Maybe we  
19 should pursue a place where our artifacts could be placed,  
20 and have a reverence to it, and it makes you feel kind of  
21 sad.

22 So I asked Victoria, and I didn't want to be  
23 mean to her at the time, but I asked her, I said, Could you  
24 stop this and let us monitor the railroad and see what  
25 artifacts are there. And she's here, sitting here and she

1 remembers I said that to her. And I think she kind of went  
2 back like that, and I was thinking, I'm not going to strike  
3 her, but I think she's scared of me, but I think, you know,  
4 when you get to a part where you want to -- you're so upset  
5 with something, you just feel like, you know, this is -- and  
6 I realized that she's a woman and she might understand what  
7 I said to her was true, because I think if it was her  
8 relatives that were someplace buried, unknown place, maybe  
9 she wouldn't want someone to dig it up and just discard it  
10 along the wayside.

11 And I think this is why it was said, and that's  
12 why -- I do have some of the pictures that were taken, we do  
13 have some of it, and that's what Johnson is talking about.  
14 We need to prepare a place for them. We all have to -- my  
15 niece here talking, she's right. We need to get together. We  
16 need to meet more often. We do need to prepare ourselves for  
17 things that -- with the railroad that happens. It's coming.  
18 Monday we'll all be gone.

19 (Speaking in Lakota.)

20 And I think we need more prayers, all of us. We  
21 have to understand, we're in a modern world where we  
22 understand the English language, and hopefully maybe all of  
23 you that don't speak Lakota, understand Lakota, maybe someday  
24 will pick up the Lakota language, the Crow language, all the  
25 different languages that we have.

1 It would be nice if we could speak the seven  
2 languages, or different languages, because I think we have  
3 learned within the hundred and, what is it, 24 years, the  
4 English language, our comprehension is here, and I think you  
5 -- some of you will become bilingual. It might be a  
6 probability for some of you to be bilingual.

7 And I'm speaking to Clair because it seems like  
8 Clair and I are always meeting on opposition, or we always  
9 have a big fight. We're not always friends. We always have a  
10 big fight, so we know that I always stand on my culture, and  
11 she is standing on the laws that she has to do something, and  
12 it's hard. It's hard. It's really hard. It's hard for me to  
13 stand up and tell you this, but the artifacts are real.  
14 Sensitivity of religious sites is real. So this is something  
15 that we should all think about and help each other.

16 I told Clair, I said, This is the last time I'm  
17 going to be involved in something so big where, you know,  
18 it's hard for me to disseminate and talk to every one of you  
19 about things that are happening. And like someone said, it's  
20 so hard to get to places, if you don't have the gas money you  
21 can't go nowhere. If you don't have the money to go some  
22 place and sleep, you don't have it. So it's really hard to  
23 do things and try to get things done.

24 And then when you get it on public television or  
25 the public phone or on the radio, there's a lot of people

1 that has no respect to our culture. Well, here, too, and  
2 that's the other thing. If you publish it in the newspaper,  
3 then they will know where the location is, and as it is  
4 someone told me that you should have picked up artifacts. You  
5 could have sold it for a thousand dollars, or more than that,  
6 you know. These are some of the issues that we need to think  
7 about. It's really -- (Speaking in Lakota.)

8 And I think that white people -- I hate to say  
9 white people, because now we're facing the multi-racial thing,  
10 too, so I hate to say this. I'm say who are you. A woman  
11 asked me one day, I came out of cafe and she said, Are you an  
12 Indian? I said, Yes, I'm an Indian. Are you a German? No,  
13 no, no, she said, I'm not German. And see when you say  
14 something back to someone, you're offending them, too. You're  
15 discriminating.

16 And I think we need to understand each other.  
17 We're all human beings, and we need to protect what belongs to  
18 all of us, and yet do it in a nice way and be able to  
19 communicate with an understanding that we're not going to live  
20 here forever. We have to make amends. We have to make  
21 policies to protect each other's rights and learn how to  
22 except what we can't do and accept what -- with help we can do  
23 a lot of things together.

24 (Speaking in Lakota.)

25 I wanted to say that while my relative went home

1 to pray for us, so this is how I got involved, and my cousin  
2 Joe is sitting here. He knows what has been going on, Oliver  
3 knows what goes on. But it's hard for us to -- (speaking in  
4 Lakota) -- what we know because it might fall on someone's  
5 ears, it might be on -- someone might talk about it on  
6 television.

7 (Speaking in Lakota.)

8 We'll be all in big trouble, you know. This is  
9 something that I always think about. So I'm -- I wasn't  
10 confronting you to hit you, Vicki, I was upset at the time  
11 that we need a further time, and you have given us and I'm  
12 really glad you did, so thank you.

13 MS. CLAIR GREEN: I believe the gentleman back  
14 there.

15 MR. ALLEN FLYING BY: (Speaking in Lakota.)

16 I would like to ask, I had some more questions,  
17 maybe two or three, and the first one was it's good to have  
18 prevention, you know, prevent things that are going to  
19 happen, that have already happened to us. And one of the  
20 reasons I came -- agreed to come was because when I heard  
21 treaties, I heard that these treaties, that they have been  
22 broken and they have been having negative effects on our  
23 people on the reservation back home, and some of them had  
24 already been mentioned, a lot of them.

25 And one of the things I mentioned was the

1 current railroad that's running through the reservation right  
2 now, Burlington Northern, and how much information I have on  
3 that and how much concern you have over that and what you're  
4 doing about it to help our people on the reservation there to  
5 resolve what's going on there, because it seemed like that  
6 should be a really high priority, rather than what's  
7 currently going on.

8 And then I don't have the document, that EIS, or  
9 whatever that statement that you say is out there, so I don't  
10 really know, but one of the three major questions was  
11 financially fit, and when that was reviewed how you  
12 determined it and if it's public information to know how much  
13 these people are willing to put up and how much they are  
14 going to spend, and now the questions are asked who it is  
15 going to benefit. It's good to know these things.

16 So those were the questions that I had, and I had  
17 three of them, and I'm trying to remember the third one as  
18 quickly as possible but when I get up in public -- (Speaking  
19 in Lakota.)

20 Who is it going to benefit, this event, the two  
21 major questions that were there, and I guess my thoughts on  
22 that were like it seems like money plays a role a lot of  
23 time. And like someone said, Mr. Between The Lodges was  
24 talking about regardless of what was said, it will probably  
25 be done.

1 But me, I don't believe that way until I see it  
 2 happen -- I see it happening, and if necessary if I need to  
 3 get in the way I will do that. I will get in the way and  
 4 say, Stop, you can't do that. But if you want to run over  
 5 me, that's okay, too, but I will do stuff like that.  
 6 And so my believe is that I don't believe that  
 7 way. I believe in the Lakota way and the Lakota way, like I  
 8 mentioned, the songs are here and that's how I believe and  
 9 that's how I help the young people learn, and they are  
 10 willing to give up there lives for a good cause, and it is a  
 11 good cause to do that.  
 12 And the other thing I would like to mention is  
 13 we have a court reporter here from Pierre, and if you  
 14 remember the book called In The Spirit of Crazy Horse, there  
 15 was many Indian people across South Dakota that were in that  
 16 book, and one of them was my father. And the repercussions  
 17 out of that was -- Janklow came back with one of them, called  
 18 operation steam along with the government, and they tried to  
 19 -- my father was an elderly, but they brought charges against  
 20 him because he made statements about the State of South  
 21 Dakota, and so he was prosecuted, but eventually cleared of  
 22 all of it, because it was called entrapment.  
 23 And so I kind of wanted to give up my name, so I  
 24 used Qadhafi's name, and I was wondering about, you know, this  
 25 coal, this rich coal place that you have. I wonder if you're

1 going to bomb the heck out of it like the United States did  
 2 with the oil wells in Saudi Arabia. It's kind of similar to  
 3 that, and in reading the book Indian Givers, going back to  
 4 South America and the minerals down there. All the things  
 5 that happen play a role. But those are some of the things  
 6 that I wanted to share.  
 7 (Speaking in Lakota.)  
 8 MS. CLAIR GREEN: Thank you. Could I ask you to  
 9 just give your name for the court reporter, please.  
 10 MR. ALLEN FLYING BY: Qadhafi. Crazy Horse.  
 11 Gollier.  
 12 MS. CLAIR GREEN: I think Mr. Red Cloud has been  
 13 asking to speak.  
 14 MR. OLIVER RED CLOUD: (Speaking in Lakota.)  
 15 First I have to talk Lakota.  
 16 (Speaking in Lakota.)  
 17 No other article one, because no other one  
 18 Daschle Janklow and this company here, it's already set. They  
 19 had meetings. They got it all planned out. So the  
 20 reservation chairman, I work with the people. I tell them  
 21 what's wrong and right. I try to understand how white people  
 22 work, white man world, you know, they don't care which tribe,  
 23 Arizona and other reservation over there, they all under  
 24 state. They got them. They don't have a meeting like this  
 25 we are today. They have governors, asked one village to come

1 and that's it. When they prove up something, the state don't  
 2 like it, they put it in the trash can. That's the way they  
 3 control it.  
 4 But we still have the treaty and so just  
 5 thinking as the reservation chairman, this is the way I'm  
 6 going to try to do it. I have a council, every tribe, and  
 7 we have to work with these people here. And I really depend  
 8 on these people here, come out with something, but I'm going  
 9 to write to the President of the United States, and I got it  
 10 down, I want her to read it, and that's the way I'm going to  
 11 do it. Because this is a big issue.  
 12 Like one person talk about mineral rights, okay,  
 13 we got oil in our reservation, Pine Ridge. They see about  
 14 four places and we got oil. Why they don't give our rights to  
 15 drill our wells, they always shoot us down, and this one here,  
 16 they going to pull it through. That's the way they work. So  
 17 we got to get to the Court, so go ahead and read it.  
 18 MS. CHARMAINE WHITE FACE: The return address  
 19 Chief Oliver Red Cloud, Black Hills Sioux Council, Pine Ridge,  
 20 South Dakota; and it is addressed to president William J.  
 21 Clinton, White House 1600 Pennsylvania Avenue, Washington,  
 22 D.C. 20500. Dear Mr. President: Your presence in the White  
 23 House has been a welcome change for us. Your recent executive  
 24 order to enhance the consultation process with American Indian  
 25 Tribes by the Federal agencies is a good measure. I also was

1 informed of a newspaper article in which you asked us to help  
 2 you to get this "nation-to-nation relationship right". That  
 3 is the reason I am writing to you. There is something you can  
 4 do which no other American president has had the integrity to  
 5 do; that is to begin talks regarding the upholding by the  
 6 United States of the Fort Laramie Treaties of 1851 and 1868  
 7 with the Great Sioux Nation. My great, great grandfather  
 8 Chief Red Cloud was one of the signatories to the Fort Laramie  
 9 Treaty of 1868. It was a peace treaty sought by the United  
 10 States, not the Great Sioux Nation. It would be very  
 11 appropriate at this time, prior to your leaving office, to  
 12 meet at Fort Laramie in a historic meeting to discuss the  
 13 upholding of the Fort Laramie Treaties of 1851 and 1868. Once  
 14 the process is started, whoever is elected to the presidency  
 15 could continue. We would then be assured that this  
 16 nation-to-nation relationship would continue also. Are these  
 17 treaties obsolete because they are over one hundred years  
 18 old? Is the Constitution of the United States obsolete? The  
 19 March 2nd act of 1889 is usually used to say the 1868 treaty  
 20 was abrogated. The 1868 treaty could only be changed by  
 21 approval of three-fourths of the adult Indian males. We have  
 22 continually said that the methods used in the implementation  
 23 of the 1889 act were not only illegal, but immoral and  
 24 terrible. We need our voice to be heard. If the 1889 act is  
 25 legal, it will hold up to the scrutiny by an impartial

1 international mediator in a hearing. These are things we can  
2 discuss if you will come to a meeting at Fort Laramie. The  
3 peace process you are currently trying to use to assist Israel  
4 and Palestinians find peace needs to begin at home. We have  
5 waited a long time for someone in the White House to  
6 understand we had a nation-to-nation relationship. I am very  
7 happy that you have begun to understand. I look forward to  
8 hearing from you. Sincerely Chief Oliver Red Cloud.

9 MS. CLAIRE GREEN: I thank you very much for  
10 sharing that letter. It's getting very late. I know that  
11 Terry Gray wanted to make a couple comments, and then after  
12 his comments I think that we can speak just very briefly about  
13 tomorrow and then close for the evening. So Terry?

14 MR. TERRY GRAY: Is there any more speakers  
15 before me?

16 MS. CLAIRE GREEN: Are there any more speakers  
17 prior to Terry? I guess you have it.

18 MR. TERRY GRAY: I hope I won't be too long.  
19 You've heard me introduce myself. I'm the coordinator for  
20 cultural resources for the Rosebud Sioux Tribe. I've been  
21 actively involved in this project since our chairman got the  
22 letter, and he drafted a letter delegating me the contact  
23 person in regards to the issues of all cultural resources.

24 But just to get you guys -- what I got to say, I  
25 hope it gets you thinking about tomorrow and the agenda and

1 how we're going to discuss the issues. But also from my  
2 understanding there's going to be a set of documents, DEIS,  
3 left in this room for review for anybody that's staying at  
4 the hotel, and if you don't have a copy to look at, they will  
5 be available here, I don't know whereabouts.

6 MS. CLAIRE GREEN: In this room probably back here  
7 at one of the tables.

8 MR. TERRY GRAY: Back here at one of the tables.  
9 And for tomorrow, I guess for discussing the EIS, and  
10 hopefully we can wrap that up in the morning. It's long.  
11 Environmental impact statements are hard to discuss. There's  
12 a lot of issues, but also because we have a court reporter  
13 here, those of you who speak Lakota, if you want it to be  
14 acknowledged, if you could, you know, have somebody translate  
15 or if you want it to be in the record then translate it  
16 yourself.

17 It depends on what you say and if you feel it's  
18 important that it should be recorded. I think it should be  
19 recorded. It's a historic day. Why? Well, today has been  
20 the first EIS process that has come to a Tribal reservation  
21 in the State of South Dakota.

22 Now I'm going to take you back, and I hope not to  
23 bore you with a history lesson, but we looked at this process  
24 and all the Federal regulatory laws that allows the tribe to  
25 be participants. So what I'm about to say I hope I don't hurt

1 any feelings, and if I do, I apologize.

2 But what I have to say has a little truth in it,  
3 and that is I want you to look at it as a jurisdiction issue.  
4 Well, what is that issue? Well, we all cannot make decisions  
5 on lands that belong to non Indians off the reservation.

6 Now the company, in its own right, has a right  
7 to negotiate and buy those lands, which he's in the process  
8 of doing. This project is here. The Tribes have to work  
9 with the management on theories and ideas in regards to the  
10 environment, and that's why we officially asked for this  
11 meeting. And I'm glad that it was acknowledged by STB. Thank  
12 you.

13 Now the reason I say it's a jurisdiction issue  
14 is, let's say that the company does not want to go through  
15 Federal lands. Well, it's a private undertaking. He doesn't  
16 even have to have input from the Tribes because it's a  
17 land/property rights issue.

18 But since there's some easements that there are  
19 applications being applied for, and I do have questions for  
20 -- definitely for the Forest Service and maybe the Bureau of  
21 Rec can maybe respond to the same, and hopefully maybe Kevin  
22 can respond in writing to the same question, like he did  
23 before. But one of the issues, as a working group when we  
24 first started having these meetings, all the designated Tribal  
25 reps brainstormed and came up and thought with this project,

1 whether it goes or not, we want to set an example of what's  
2 going to start happening in Indian Country.

3 Why? Well, I have -- all the experiences that  
4 I've dealt with in regards to cultural resources, the tribe  
5 has got burned. Why? Well, they never initiated the  
6 processes of getting involved, creating documents or  
7 agreements that allow them to be treated as equal partners in  
8 the decision of what's going to happen.

9 So as Tribal reps at these meetings we decide,  
10 well, what is archeology? It's a study of culture. We  
11 thought -- we looked at what has been the injustice to the  
12 culture. Well, archeology has stolen the culture and took it  
13 to museums and shelved it. We thought, well, we need to  
14 control that.

15 So then we started requesting, hey, we want to  
16 be part of the -- we want to help you draft the Identification  
17 Plan. And I'll be honest with you, I think from what I  
18 understand, I think we submitted a lot of comments. There's  
19 been a series of drafts on the Identification Plan, the  
20 Programmatic Agreement and the Memorandum of Agreement.

21 Now at one time there was just going to be a  
22 Programmatic Agreement, because all the official Tribal  
23 officials said we also need a Memorandum of Agreement, and we  
24 want to be signatories. We want to be equal partners in the  
25 process.

1 Now let's reflect back. If this was happening  
2 on privately-owned land the Tribes would not get to  
3 participate because they would say, well, you guys go back to  
4 the rez and you do your own decisions on your boundaries.  
5 This is a private land deal. I have the authority.

6 So we thought we don't want to lose  
7 archeological, so how can we do that. Well, we need to tie  
8 it to an agreement that allows the Tribes to participate in  
9 some type of management area. Now that tribe has the right to  
10 define how it wants to partake in that, whatever area is its  
11 interest. For Rosebud our first intention was to protect the  
12 burial sites, because when I first was put on a committee to  
13 represent the Rosebud, it was Native American Graves  
14 Protection and Repatriation Act.

15 And so we wanted to fix an agreement so that  
16 there would not be any excavations; that the Tribes would be  
17 equal partners in sitting down with the company and saying we  
18 need to avoid this area and leave that area.

19 So you have to get involved. And yes, the  
20 treaty people, they do take their place in this process, but  
21 I think we beat the treaty horse to death today. We need to  
22 look at the EIS. Let's look at those alternative actions.  
23 And when you say something, don't be afraid to say your name  
24 and that you are opposing the project.

25 And by the way, come up with an excuse, because

1 one of the plans doesn't work or something. That's what is  
2 very important on this recording here, because when they go  
3 back to Washington, they are going to look at, well, they  
4 just said they didn't like it. They didn't talk about Plan  
5 A, B or C, or you know, so be constructive. And it's not  
6 that you're agreeing. We can all agree to disagree.

7 And so the real issue is control outside the  
8 reservation boundaries, because this is practically -- a  
9 majority of this project is from privately-owned lands, not  
10 Indians. How can the Tribes maintain a little control in the  
11 decision process?

12 Well, maybe this question I give to the agency it  
13 will help you see clear. We'll start with the Forest  
14 Service. A little while ago you talked about the company  
15 applying or getting permission for the easement. It's your  
16 role to insure that historic preservation is provided by the  
17 Tribes. Now what do you think about allowing the Tribes to  
18 have the same easement as the company in regards to historical  
19 -- cultural historic preservation?

20 MS. WENDY SCHMITZER: You know when that issue or  
21 that suggestion was made, I woke up, because I thought that  
22 was a really interesting idea, and I really think it's  
23 something that I will take back, because it makes sense in a  
24 lot of ways. But let me throw out something else to  
25 consider.

1 When you ask for an easement alongside a private  
2 development, you have to be careful of what you ask for  
3 because you may not like what you get. And we have this  
4 problem in other areas where we grant easements, and we have  
5 a conflict of uses, and it's not easy to manage.

6 But if we were to grant an easement that was  
7 simultaneous with the railroad, then we would have to also  
8 consider the rights of the ranchers whose land is going to be  
9 taken over through condemnation, who will lose acreage to the  
10 railroad, lose grazing opportunities, lose cattle through  
11 mortality of the trains, and we would have to make them a  
12 partner, too.

13 So, you know, where do you draw the line when  
14 we talk about multiple use. I mean should the easement be  
15 granted only to the private developer? Should it be granted  
16 to the rancher who will lose his land, who through  
17 condemnation actually will have it taken away, or to the  
18 Indians who under the treaty believe that it is actually  
19 theirs and should also have the rights.

20 So it's a very interesting question that you  
21 propose. I'm not sure how to answer it, but I think it's  
22 something worth discussing further and I will take that issue  
23 back, and I appreciate your raising it.

24 MR. TERRY GRAY: Your turn.

25 MR. JAMES KANGAS: Let me put on my shirt with

1 the big bulls eye on it.

2 MR. TERRY GRAY: The reason I bring that up is to  
3 bring up the issue of treaty, we have to discuss the easement.

4 MR. JAMES KANGAS: I'm James Kangas, area  
5 archeologist with the Bureau of Reclamation. DM&E proposes to  
6 cross a Bureau of Reclamation irrigation project at the  
7 Angostura Irrigation District, which is in Fall River County,  
8 South Dakota. Is my voice coming through okay? How is this?  
9 I'll do my Elvis impersonation.

10 Under 36 CFR 800 Federal agencies are responsible  
11 for the identification, evaluation and management of cultural  
12 resources. This includes on lands that they own and manage,  
13 as well as within easements that they get for irrigation  
14 projects, such as Angostura and for railroads, any sort of  
15 linear project.

16 Speaking from a Bureau of Reclamation experience  
17 when we acquire easements for irrigation projects or pipelines  
18 on private lands we do not acquire title to those lands we are  
19 simply being allowed by a private landowner to do construction  
20 activities and operations and maintenance activities on  
21 waterlines or irrigation canals through those lands.

22 Our responsibility is limited in terms of land  
23 management, but let me tell you what we need to do, what we're  
24 responsible for under the law. We are responsible for  
25 consulting with the Tribes as a Federal agency on the

1 management and the significance of those sites, and this we  
2 do. We do this for our ongoing operations and maintenance  
3 activities, on our irrigation projects as well as through our  
4 large rural water pipeline projects, like Mni Wiconi and Mid  
5 Dakota. That's how -- that's the level of involvement.

6 Currently the laws allow us to deal with the  
7 Tribes. Now in terms of the Tribes holding title to those  
8 cultural resources, ultimately the buck stops with the  
9 Federal agency, and I'm not speaking of reclamation,  
10 specifically, I'm talking of them all.

11 It's the Federal agency's responsibility to  
12 consult with the Tribes. Under the Native American Graves  
13 Protection and Repatriation Act we are responsible for doing  
14 inventories of human remains they have under their call and  
15 their responsibilities for having inventory and museum  
16 property program for those artifacts from archeological sites  
17 that have been taken --

18 MR. OLIVER RED CLOUD: Like talking about, sir.

19 MS. CLAIR GREEN: You might want to speak in the  
20 microphone so the court reporter can --

21 MR. OLIVER RED CLOUD: Like you talking about  
22 Indian tribe and treaty, which one are you talking about.

23 MR. JAMES KANGAS: I use Indian tribe  
24 generically.

25 MR. OLIVER RED CLOUD: Because the way it sounds

1 now, you talk about the tribe, we are the treaty tribe that  
2 try to get this thing settled. But everything that you're  
3 saying it just come into my mind, you talk about Indian tribe,  
4 we can't use Indian tribe because it's on the United States  
5 Constitution, so we have to stay on the treaty side. See  
6 that's the way -- that's why I wrote that letter and that's  
7 pretty hard to understand, you know, your treaty, you can  
8 understand what I'm talking about.

9 MR. JAMES KANGAS: I do, and generally the law  
10 distinguishes Tribes as those that are federally recognized  
11 Tribes.

12 MR. OLIVER RED CLOUD: Because right now, see any  
13 time anything comes, like an issue of treaty, they use Indian  
14 tribe because then the people are balancing because if they  
15 come we lose, and they go we have to understand and be  
16 careful. Like what he says, we have to be really careful  
17 because we are talking about -- we're all treaty tribe, but  
18 out there people live off reservation and some of our people  
19 here they got nothing to loose. But we have treaty and our  
20 rights and our land, because we are the landowners. We have  
21 something to loose. So we have to really be careful because  
22 people have their balance, and so we have to really be careful  
23 on that.

24 MR. JAMES KANGAS: Thank you, and I would just  
25 like to say that I gave you the bureaucratic legalistic

1 approach to cultural resource management. It is a Federal  
2 agency. You know, I work for the Bureau of Reclamation. I  
3 work for the Federal government. It's my job to see that my  
4 agency complies with the law, and that's where I'm coming  
5 from.

6 However, if any of you would like to discuss that  
7 with me aside, I would be very welcome for your comments and  
8 opinions. Thank you.

9 MS. SWIFT BIRD: I want to ask the forestry  
10 service, some years back we had a meeting in Custer, and the  
11 forestry serviceman we asked how about this trust  
12 responsibility, since we have the trust responsibility.

13 Now how about this strip mining in the Black  
14 Hills, where is the trust responsibility, and who has the  
15 trust responsibility to take care of us and who has the  
16 say-so.

17 Now I'm going to tell you this presidential  
18 election is going on today, this whole territory is like a  
19 football field, but it's just a football. Republicans and  
20 democrats are kicking us around, want to kick us off the  
21 football field. That is their idea. And this is our  
22 homeland. We were here before the foreigners ever came here,  
23 and we are a sovereign nation. We supported ourselves until  
24 the treaty was signed, which was responsible, and then they  
25 never lived up to the trust responsibility that's been

1 signed.

2 Now how about this railroad that's coming  
3 through, who's going to hold trust responsibility there? 1851  
4 we had only one, one to go through from east to west, that's  
5 all, and when did these other railroad companies cross from  
6 all over? We never had no bypass airway neither. They are  
7 trespassing over our territory with airplanes.

8 Now today I think the Lakota people should all  
9 get together as one and decide as one and believe as one.  
10 We've been kicked around too long. Lady said some foreigners  
11 should have some sympathy for us in some way. Now as  
12 transportation, there's a lot of transportations here, which  
13 transportation are we talking about today? It's a railroad  
14 that we're talking about.

15 Now if the Great Sioux Nation or Lakota Nation  
16 here, would you take the word back to the Transportation Board  
17 and tell them what they want, if they don't want it, or they  
18 want it, it's got to be voted by the people. There may have  
19 to be a referendum or secretarial vote, and it's up to the  
20 interior department to decide for us because he has a trust  
21 responsibility over the Lakota people.

22 (Speaking in Lakota.)

23 I would like to tell each and every one of you  
24 that have come to visit us, and I'm glad that you all came to  
25 be heard by the Lakota Oyate, and there are more of us Lakota

1 Oyate and we're all looking up now and I think we come to  
2 realize what is happening to us, because of the overtaking of  
3 our land, our homeland. You have a homeland somewhere, but  
4 you came to us. We shared with you. Maybe you don't realize  
5 that.

6 I always say foreign people, you're not the  
7 Lakota Oyate that had this nation. We were. And that's why  
8 we're saying today, please stay away from our Great Sioux  
9 Nation. We're bands of people Lakota Oyates. And yet when  
10 she mentioned independent nation, I don't know where that  
11 independent nation came from. Somebody probably made that --  
12 probably Gray did that. He probably made himself an  
13 independent nation.

14 And you talk about forestry, the land and the  
15 coal, that all belongs to the Lakota Oyate. And I always  
16 think this, you know, all the millions of people that came to  
17 our homeland to live, if any -- each and every one of you put  
18 a cent in a bucket for the Lakota Nation, you know, we would  
19 be billionaires. We can do what we want to in our Great  
20 Sioux Nation, but you're not satisfied. You want more. You  
21 want to take more.

22 Just put in your mind the Great Sioux Nation.  
23 You have taken all the gold away now, but we don't care.  
24 We're not -- we live for ourselves as humans and relationship  
25 respect and honor, for within our Lakota Oyate we believe in

1 that, but we're sleeping. We're taking naps too long now,  
2 and I think it's time we wake up and say, Hey, you have come  
3 too far now. You're stepping on our toes. We're going to  
4 wake up now and we're going to fight back, and I think that's  
5 where we're going to be.

6 And she should have had an interpreter because  
7 when I spoke to Lakota Oyate there was a lot that I said,  
8 but I'm saying it to you. Said stay here and talk to us  
9 some more and get yourself educated in what we and who we  
10 are, what we're doing, what belongs to us, and what we are  
11 sharing with you. Be satisfied. Don't try to take any more  
12 from us. We have had enough taken from us. We need it for  
13 our children, too, our nation of children that's going to  
14 follow us. We need our Great Sioux Nation.

15 And that forestry, that land, that Black Hills,  
16 everything is sacred to us. We didn't say nothing. We  
17 didn't want to fight over that because the sacredness is our  
18 life way. We believe in ourselves as who we are and the  
19 sacredness that we carry through our lives and for our  
20 nation.

21 So I guess we didn't say too much, but I think  
22 we're beginning to come to the point where things are going  
23 just, too, too far in taking mineral rights, the gold. You  
24 can have all the gold. You have taken -- I know all of you  
25 probably want to take more gold, but we can't offer you

1 that. But our mineral rights are still ours.

2 And like I said today, I don't know if I  
3 mentioned it, but just a foot of that topsoil is what was  
4 given to the foreign people for their survival here on this  
5 world, in our continent, and what they have given you as a  
6 gift for your survival, for your people, you know, when you  
7 have enough richness, or whatever you make, step aside so  
8 somebody can step in. We can share that with you all over.

9 But you come here, you talk to us and look like  
10 you don't even understand what we're trying to tell you. You  
11 don't. You either don't want to understand, or you don't  
12 care to understand, or whatever, but I think you need to know  
13 who we are as Lakota Oyate, and the Lakota Nation that is  
14 rightfully belonging to the Lakota Oyate.

15 And I think you need to know that and maybe  
16 that's why I sit here and talk a little more, and say what you  
17 want about our land, we can explain to you more what belongs  
18 to us of the Great Sioux Nation. Thank you.

19 MR. LITTLE DOG: (speaking in Lakota.)

20 I would apologize for being late. My name is  
21 Leland Little Dog. I'm a part-time student representative to  
22 the Board of Regents of Sinte Gleska University, and we would  
23 like to go on record as being opposed to DM&E Railroad  
24 passing through our area. We view it as the same violations  
25 as the Mitigation Act park plan. It violates first our

1 inherent rights.

2 We have a lot of religious believes that are  
3 associated with the soil itself, such as fossilized soils,  
4 fossils themselves, and we feel that any development that  
5 has been done within treaty territory, the EIS's aren't  
6 satisfactory. These EIS's need to be based on oral  
7 tradition, the oral tradition of our people, and look at  
8 land sites and other forms and you use these to determine our  
9 -- these EIS's. That's a part of our inherent right that we  
10 have.

11 The other thing is consensus, without consensus  
12 all of this is illegal because the IRA governments, or even  
13 higher education institutions, without consensus from the  
14 people themselves they have no authority to make any kind of  
15 deals with our treaty resources. We believe that these are  
16 treaty educational resource reserves guaranteed to us by  
17 treaty, and it's part of our economic development for our  
18 future.

19 By this we mean that we want our young people to  
20 start studying these fossils, because we know that all around  
21 us, all the other fossils have been studied, but here it's  
22 almost like a no-man's land, because after 1868 it was illegal  
23 to come in here. And if you look at the book, The White  
24 Badlands, it's one of the best documented treaty violations  
25 that there is.

1 From 1868 to 1877 there's a whole bunch of  
 2 expeditions came out here from various places and collecting  
 3 these bones that belong to us. And to us bones are not  
 4 something that belong in a museum. It's something that  
 5 belongs to our future generations. It's something that we  
 6 can begin to build a paleontological center around the Black  
 7 Hills.

8 You know, the Black Hills is really a rich area,  
 9 and so is the Badlands, both treaty territories. You know, if  
 10 we were allowed to develop our resources the way that we want  
 11 to, without Federal restrictions or internal fighting over  
 12 control, decision making, our people could be economically  
 13 dependent very easily.

14 Just at Rosebud we realize what we can do with a  
 15 million acres of land alone. And you increase that to cover  
 16 everything, we can develop our leather industries. We can  
 17 match the state dollar for dollar for public improvement  
 18 projects. You know, it would be something that would benefit  
 19 national economic development, and would benefit the whole  
 20 nation. The way it's going now, we're going deeper into  
 21 poverty, while the things that we say they are not going to  
 22 listen to.

23 And the United States government needs to be  
 24 brought to the spotlight of international attention, because  
 25 treaty rights are international law. And when we were -- we

1 thought we had first amendments rights and we built up cases  
 2 against like the pork plant, only to find out that, you know,  
 3 the record in the Federal Court was -- the First Amendment  
 4 rights was nothing. They have no respect for our religion.  
 5 So how do you deal with the government that's not doing at  
 6 home what they are saying they are doing out there.

7 And one of my elders over here said that, you  
 8 know, there's more people out there that believe this, and  
 9 it's true. I think the few that are for this are the few  
 10 that are for the small minority. The rest of the people out  
 11 there, if they are not here to deal -- or if they don't have  
 12 representatives here to represent them, then there's no  
 13 consensus. We can't any longer make a few -- let a few make  
 14 decisions on our behalf that affects our future.

15 I'm probably just reiterating what -- a lot of  
 16 what the people said today, but on behalf of the students at  
 17 Sinte Gleska University, we support our elders. Thank you.

18 MR. TERRY GRAY: Are there any more before we  
 19 close the meeting? We went a couple hours over, but I won't  
 20 turn anybody away.

21 Okay. Well, you guys are all invited to come  
 22 back at 9:00 a.m. to reconvene on the Draft Environmental  
 23 Impact Statement, and we're going to go into the review of Hay  
 24 Canyon alternative routes, recommendations and comments. And  
 25 lunch will be provided tomorrow for everybody, all the

1 participants.

2 And keep in mind there's going to be draft  
 3 documents left in this room for review on one of these tables,  
 4 a complete set. I think there's eight volumes. And  
 5 specifically what's important is you need to read -- I'll tell  
 6 you exactly which volume that we put heavy input in, and  
 7 that's Volume 8-A. It talks about the Memorandum of  
 8 Agreement, the Programmatic Agreement and the ID Plan. And  
 9 then we'll get back to -- that should cover tomorrow. Is that  
 10 it? All right, well --

11 MR. JAMES KANGAS: I move we adjourn for the  
 12 evening.

13 MR. TERRY GRAY: We will adjourn the meeting  
 14 until tomorrow morning, 9:00 a.m.. See you all.

15 (End of proceedings for November 28, 2000.)

## POWDER RIVER BASIN EXPANSION PROJECT

## DRAFT ENVIRONMENTAL IMPACT STATEMENT

## Tribal CONSULTATION MEETING

\*\*\*\*\*

VOLUME 2 OF 3

PAGES 137 - 285

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NOVEMBER 28-30, 2000

ROSEBUD, SOUTH DAKOTA

Wednesday, November 29, 2000.

MR. TERRY GRAY: We would ask Mr. Red Cloud to start with an opening prayer.

(Opening prayer in Lakota at this time.)

MR. TERRY GRAY: The agenda -- yesterday unfortunately our chairman was gone, but he would like to give you a welcome.

CHAIRMAN KINDLE: Thank you, Terry. Good morning to all of you, all the participants here this morning. I couldn't be with you yesterday. I understand you got started about noon yesterday. I was at another meeting in Rapid City yesterday. But it's good to have all of us together here, all the participants here to discuss, and I guess to see what is on each other's minds. It's good that we can sit down like this in a forum to discuss what could be, I guess, mutually beneficial for all of us here.

We need to talk about it. We need to see the presentation that Mr. Schieffer and his group are going to give us today. And I'm sure all of you sitting out there have a lot of questions, and hopefully we can get those answered today. That's the purpose of a forum like this, is to get any concerns, any issues, any questions out into the open, on the table for some discussion. So that's what we hope to do today. We hope to achieve that.

So I'm not going to take a lot of time here.

We'll get started. I understand Mr. Schieffer will be here later, but we'll get started this morning, and with that I just want to say thank you all for coming. I hope you enjoyed your stay here at Rosebud. I hope you were all treated well. We appreciate having you here, and we'll get started here. With that, I'll say thank you and once again welcome to Rosebud.

MS. CLAIRE GREEN: Good morning everyone. Just to briefly review the agenda for this morning, we're going to sort of pick up where we left off yesterday with Terry Gray, and he's going to talk a little bit about the Memorandum of Agreement and the Programmatic Agreement.

We would like to continue with open comments, because there were a lot of comments made yesterday and very interesting ones that we would like to hear more of. But we would like to ask that if there are more open comments like that, that we wait until this afternoon, because we do have an agenda. There are some people that have come a distance to this meeting who would like to talk about some of the other pieces of the agenda. So if we could have the open comments this afternoon, we would be more than happy to do it after lunch. Just as yesterday, lunch will be over in the cafe, and it will be served promptly at 12:00.

The only other thing we need to really be mindful of as we move into this afternoon is there is bingo

in here tonight, so we have to be out of this room at 4:00.

So we hope there will be no disrespect to the comments going on at the time, but we've been asked to please leave at 4:00. We can always continue tomorrow morning. So I just wanted everybody to know that before mid afternoon and we had to interrupt people.

Yesterday we started off with an introduction by Vicki Rutson from the Surface Transportation Board and introduce the other Federal officials here, and we then moved on into open comments. So today we would like to this morning address the Memorandum of Agreement and the Programmatic Agreement, and then if there's time before lunch talk about the Hay Canyon alternative, I think which is real important for especially some of the Pine Ridge people.

At this point I will turn it over to Terry Gray.

MR. TERRY GRAY: Well, as you know, we're going to pick up this afternoon with the additional comments on the EIS, but part of the EIS is a result of consultation and processes and working with Federal agencies and the cooperating agencies, Tribes and the Applicant in this case, it would be, the DM&E have developed a Programmatic Agreement and ID Plan.

Programmatic agreements are done in regards to how Tribes should consider or how they want to participate in cultural resource management. But at the previous meetings

1 all the Tribes, they didn't -- they liked the Programmatic  
2 Agreement, but they wanted a different process, so that they  
3 would be treated more of equal partnership, and that's where  
4 the concept of the Memorandum of Agreement came and the MOA's  
5 goal was providing Tribes the opportunity to substantiate  
6 participation in the environmental historic review process  
7 under NEPA.

8       You heard me say some statements yesterday, and  
9 I've been doing this work for about ten years, and the State  
10 of South Dakota has never treated Tribes as equal partners.  
11 The real true intentional goal from all the designated reps  
12 in this process was there's going to be archeological surveys  
13 done on privately owned, non Indian lands.

14       So we all thought, what can we do to accomplish,  
15 what process can we take so that we're going to be treated as  
16 equal partners in that area. And through the MOA we still,  
17 you know, talked, although it's non Indian, private ownership,  
18 it is still deeded lands.

19       And from my professional experience and with  
20 cultural resource management, in protecting sovereignty, the  
21 best way to do it -- and we've done it before in Colorado, in  
22 Boulder, there was five Federal agencies involved, 2000 acres,  
23 a Memorandum of Agreement was developed there with a  
24 Programmatic Agreement in regards to historic preservation and  
25 monitoring.

1       I know everyone is saying why monitoring. Well,  
2 we agreed here that there needs to be archeology done, but  
3 there needs to be a Tribal monitor to witness what sites are  
4 in that what you call the corridor. Why?

5       You heard me say how a site in Bear Butte,  
6 South Dakota got cleared by an archeologist because there  
7 was no witnessing of what sites were available. That is why  
8 monitoring is there. The eyes and ears of the Tribes, and  
9 there it makes the archeological contracting company  
10 accountable. That way when you have sites that are in the --  
11 impact area, you have the groups.

12       And if everybody wants to -- I think there's  
13 extra volumes laying on the table. It's Volume 5 -- oh, no,  
14 this ain't it. The MOA Volume A -- I'm sorry, I'm looking at  
15 a volume that I have a lot of comments on, and I'm trying to  
16 focus on our agenda.

17       So Volume 8, Book A has the Memorandum of  
18 Agreement, the Memorandum of Agreement between the signatory  
19 Tribes, the Surface Transportation Board, the Dakota Minnesota  
20 & Eastern Railroad Company regarding the Environmental Impact  
21 Statement for the Powder River Basin Expansion Project.

22       If I see a show of hands I can get it Xerox  
23 copied, if everyone wants a copy. Yes, we want copies,  
24 probably about twenty.

25       But most importantly in regards to the MOA, it

1 mentions a Programmatic Agreement. The Programmatic Agreement  
2 was designed so that now that there are sites to be recorded,  
3 the Programmatic Agreement initiates the equal partnership  
4 between the interested parties in regards to the impact of  
5 the archeological resource, not only that it goes as far to  
6 say that the Tribes can say what areas really truly need to  
7 be protected, what areas, it gives the Tribes the authority  
8 to sit down with a company and say, We're going to help you  
9 do an alternative so that there is minimum impact or no  
10 impact.

11       And it's a sovereign stand acknowledged in what  
12 you would call -- you can ask any attorney this, a legal  
13 binding contract. A Programmatic Agreement out of all of a  
14 Memorandum of Understanding agreement or understanding, the  
15 one that has the most legal binding acknowledgment in court  
16 is a Memorandum of Agreement.

17       So you have to keep in mind you have your  
18 Memorandum of Agreement, which identifies the agencies, and  
19 in regards to how things are going to work. You have the  
20 Programmatic Agreement that shows -- that justifies the  
21 tribe's equal rights in the process, and each tribe or  
22 organization -- there's organizations in this, too.

23       When Clair brings the copy back you'll see you  
24 have the Medicine Wheel Coalition as an interested party, the  
25 Medicine Wheel Alliance, the Grey Eagle Society, Black Hills

1 Sioux Nation Council, and they can define how they want to  
2 participate in that role under these documents.

3       Did you have a question.

4       MR. ALLEN FLYING BY: I think there's an  
5 agreement missing there, the one that says we can do it in the  
6 way we need to.

7       MR. TERRY GRAY: How would you like to see it  
8 done? What are we trying to accomplish and I could tell you  
9 where, which agreement needs to be --

10       MR. ALLEN FLYING BY: A group of Indian people  
11 come together, all interested Tribes, sit down and say here's  
12 what's going to benefit us the most and be recognized.  
13 There's not in the treaties discussed every day, I don't -- I  
14 hear agreement from the state and from the Federal government  
15 but what they want, there's nothing in there in the agreement  
16 that states anything that we want, any kind of agreements in  
17 there like that.

18       MR. TERRY GRAY: Well, when Clair brings the copy  
19 -- we might as well get a copy of the PA done, too. Elaine?

20       MS. ELAINE QUITTER: We have an act in place that  
21 would help us. Good morning everybody. I was thinking of a  
22 lot of things last night. I was looking through the index of  
23 where to go and what to do and how to protect our being a  
24 group of people known as the Lakota.

25       And I run into different acts that was made

1 after the 1868 treaty. Among them is the Bureau of Indian  
2 Affairs, and then that has to do with the 1851 treaty. There  
3 is a treaty that places an Indian agent among our people in  
4 the beginning and one of the -- I stayed up a while reading a  
5 lot of the treaties that are in -- the certified treaties and  
6 I think this is something that we should be involved in. I  
7 think we really need to know this.

8 And by the way, my comment today would be to see  
9 that we research every avenue and every act that has been in  
10 place, so we don't abrogate our -- one of the acts that is  
11 involved in this -- in our life, because this is really  
12 pertinent to our existence as a treaty -- I don't know how to  
13 say it, treaty people, and who are the treaty people?

14 There's a lot of questions I have pertaining to  
15 the treaties that exist and ratified and proclaimed in  
16 Congress. The 68 Treaty was proclaimed in Congress, and so  
17 it's written and we have to really look into the areas that  
18 need to help us. Acts that were made that pertain to  
19 different issues, the land issue, everything that we own that  
20 affects us is kind of like a spiderweb. You have to pull one  
21 to get to the other.

22 And I think it would be nice if we could look  
23 into it ourselves, or get a lawyer to help us look into the  
24 acts that exist for us today, because a lot of the younger  
25 people are at a standstill, because I don't think they are

1 really orientated or no one has ever really explained what a  
2 treaty is or what an act is, what the bills are.

3 And I think this is something that perhaps I and  
4 Clair has gone through, through the years that we worked  
5 together on different issues, and I think this is what the --  
6 Wilber kind of nudged us, telling us that we spent a lot of  
7 time going over things and making each other understand what  
8 we're talking about, and then it would be time -- less time  
9 involved in issues like what we are today.

10 Because this is a major issue that's going to be  
11 involved. We're not going to be involved in just only a  
12 decision making of should a railroad be built again, because  
13 there was one there previous, and all the construction and the  
14 raping of the mother earth was done already with the railroad  
15 that was placed before. So what do we do again? Do we go  
16 back and give our approval for another railroad to go  
17 through?

18 And these are some of the things that are really  
19 in my mind when I think about all these things that are going  
20 on. And we have a lot of young people. We should teach our  
21 children regardless of what race our heritage is, our laws  
22 that exist within our own cultures and our own lives. And I  
23 think this is something that I'm glad that Victoria is  
24 represented here. I'm glad she's a woman where we can cry and  
25 argue, you know. But that's really nice, because I think

1 maybe at last we will have a chance to preserve a cognitive  
2 life that would help every one of us.

3 And I think this is something that we don't want  
4 some corporation from Japan or someplace to come here and  
5 build a spiderweb rail line, because it could be sold. A  
6 railroad place could be sold. Who knows the people that are  
7 going to help build this railroad are from overseas, you know,  
8 and they have their own laws, and their own way of life.

9 So what do we do, will we be working on it and  
10 pretty soon everyone will wonder what happened to our  
11 mortality of not really reviewing it and take it apart and  
12 see where it's leading us, you know. And I think we all have  
13 a job to perform, but we need to think about our human  
14 interest and our human life and our own personal perspective  
15 of what we want it to be, and I think this is something that I  
16 think we need to look to.

17 We need a business lawyer. We need a lawyer  
18 that could explain how a business works and how we can  
19 protect our area, but by not allowing all these -- pretty soon  
20 you won't have no place to live. It will be railroads and  
21 roads, two lane highways and all this that's eating up all the  
22 space that we have. And it just kind of made me think about  
23 all the things that are going on. So this is my comment, that  
24 we need to really look into all the areas that's going to  
25 affect me in this area.

1 Like one of the young ladies said that she  
2 milks cows in the morning and milks cows in the evening, even  
3 that has a lot of impact. We need to know that our cows are  
4 protected and they don't swallow up the air that's polluted  
5 or the grass that's polluted by God knows what, you know. It  
6 really makes me feel uneasy sometimes.

7 So I do need to go home and talk to the other  
8 thousand and one elders that I work with. It's going to be  
9 on the air today, because that's what I had to tape, my  
10 being here, so it will be on the air probably about five  
11 minutes. And I think that's really important for us to  
12 think about it.

13 We have to be prepared. We have grandmas that  
14 need to come. If we brought all our elderly you won't have  
15 no place for them to sit, because that's thousand and one,  
16 thousand and two. I think this is something that I kind of  
17 really -- on a place where I can't make a decision for all  
18 their grandchildren, for their children. We have a lot of  
19 people involved in this, and I can't make that decision to  
20 sign a MOA or MOU, and I think we really need to look at it.

21 And I wished we had a radio station that we  
22 could talk as we speak here, that way people will understand  
23 and won't accuse us of my saying yes to Vicki. I've been  
24 accused of that. They said you already said yes to whoever  
25 is going to approve this, and I said, well, have I? Vicki

1 and I are just one of the persons in this whole project  
 2 that's going on, and so I said just one person can't say  
 3 yes.  
 4       So with that I would like to see if we could  
 5 find us a lawyer that would help us understand how things are  
 6 working, and then I'm still working -- I was so upset  
 7 yesterday because everybody was kind of whispering in my ear,  
 8 I wasn't doing this or that, and I didn't get any things out  
 9 and all this, and yet I told Dan I was going to quit. He  
 10 said, You can't leave me because he said we didn't finish  
 11 yet. And that's true, Dan. We didn't finish.

12       It takes a long time to research and do all  
 13 these archeological findings, make sure that you have a right  
 14 to answer to right descriptions and you have to have the  
 15 culture orientated that's involved. And I think my being  
 16 always a third grader, I think I need to know everything on  
 17 the backside and underneath and above it and be on it. And  
 18 so I think this is something that we all need to understand  
 19 here, and I think I'm probably the only third grader here.

20       So I think this is something that I really need  
 21 to say, so I need to -- I really need to implore the STB to  
 22 give us a chance to really look at it in all directions, and  
 23 then by that time Dan and all can finish the project that  
 24 started. And I told Wilber that I was going to tell everybody  
 25 that we have 39,000 Sioux. They should all get involved,

1 maybe we could get it done. And I think the population that  
 2 we have should have them count the Minnesota Sioux, but I had  
 3 to hurry up and figure out how many people were in South  
 4 Dakota.

5       With that I would like to thank all of you for  
 6 being here. I'm going to stay here until this afternoon and I  
 7 have an obligation to my elders that I give a stipend every  
 8 Friday for their volunteers them in schools to the children to  
 9 teach, so I have to leave this evening. Thank you.

10       MR. TERRY GRAY: Thank you. I wanted to say  
 11 something real quickly, and I know it's a sensitive issue, but  
 12 when the Tribes that were putting this document together, we  
 13 did a lot of research into what is working for Tribes and what  
 14 isn't. But under the MOA, under page three, and your copy is  
 15 coming but I'm going to read you this, Whereas, the United  
 16 States Government has a trust relationship with the American  
 17 Indian Tribes, as evidenced by treaty and provisions in  
 18 numerous laws, Federal laws.

19       Tribes are so federally regulated we have no  
 20 choice but to get into the Federal process of using those  
 21 laws to strengthen our sovereignty. What are those  
 22 sovereignty issues? Well, this project is going on Indian  
 23 lands. The landowner probably could tell us to take a hike,  
 24 but we use these laws in agreement.

25       Now keep in mind this is just a draft. No way in

1 form Rosebud has not officially accepted or denied this. But  
 2 I'll tell you this, we put a lot of work into this. Why?  
 3 Because we were thinking of all the Lakota people. But under  
 4 the laws use the National Historic Preservation Act. And I'm  
 5 not sure if everybody's familiar with all these laws, the  
 6 American Religious Freedom Act. Why that? Well, let's look  
 7 at that.

8       To this day there has been only one court case  
 9 that has acknowledged Native American religion, the Peote  
 10 case, all the other cases that went to court in religious use  
 11 were kicked out of court. So therefore we know that under  
 12 this Constitution they are not acknowledging Native American  
 13 religion.

14       So we put this law into this document thinking  
 15 about Native Americans who want to practice their religion in  
 16 the Black Hills area, that this project might be associated  
 17 with a Federal agency, and truly thinking that there is some  
 18 big Federal agencies in this project who are not too Indian  
 19 friendly, and I'll give you another example. Bureau of Rec,  
 20 under NAGPRA they have taken collections and shipped them out  
 21 of state.

22       We put so much input into the ID plan we locked  
 23 that property as staying within the state. But we're taking  
 24 a stand to read under these laws reclaiming ownership of what  
 25 was taken away from us. Yes, it was an army executive order

1 that allowed the army to start collecting things. That sort  
 2 of created anthropology. It created museums and shelving of  
 3 our artifacts. Native American Grave Protection/Repatriation  
 4 Act, NAGPRA is the sole foundation of this.

5       When our committee got started here in Rosebud we  
 6 were acknowledged first as the tribe's Native American Graves  
 7 Protection/Repatriation Committee. Until you have an  
 8 inadvertent discovery on your reservation, then you really  
 9 don't know what NAGPRA is. NAGPRA is an archeological law for  
 10 only the Tribes who want to accept it as an archeological  
 11 property law.

12       So we're trying to accomplish things in this  
 13 draft document that talks about property rights, Indian  
 14 property rights on non Indian lands. That was our first  
 15 priority, protecting the sovereignty of the Tribes, the  
 16 integrity of the -- of those resources belonging to the  
 17 Tribes. We never ceded those.

18       Unfortunately, somehow, because it was a Federal  
 19 act that superseded the treaty and it started that collection  
 20 and stealing Native American artifacts and burial items. So  
 21 now we're using the law to turn that around, turn something  
 22 that has happened to the Tribal peoples in a negative way, to  
 23 turn it to a positive impact, where now we are treated as  
 24 equals, which is a human rights law and that we get to  
 25 participate.

1 But also we used the National Park Service  
 2 Bulletin 38. What is Bulletin 38? Well, there is a  
 3 discrepancy in research. The research is archeology studies  
 4 culture. Culture wouldn't exist without archeology; that's  
 5 the layman's explanation. The archeology wouldn't exist if  
 6 it didn't have any culture to study; that's the bottom line.  
 7 But the National Park Service said Bulletin 38 is an oral  
 8 history perspective, and we all heard yesterday that word,  
 9 "oral historical people".

10 So we put that into this agreement, Bulletin 38,  
 11 why is that? Well, if there's a site in proximity of the  
 12 right-of-way, religious site that needs to be used by a Native  
 13 American practitioner, elders can justify him continuing to  
 14 use that site as a religious alter. That justifies the  
 15 American Indian Religious Freedom Act, which the courts have  
 16 not done today, except for the Peote case.

17 Also, we used the executive order  
 18 government-to-government, an executive order, in protection of  
 19 nomination of sacred sites. To this day -- keep in mind I've  
 20 been doing this work for ten years -- there has not been  
 21 sacred sites protected. It's because the Tribes need to  
 22 utilize Bulletin 38 to do the process to protect that.

23 So the Tribes have to be the participants if  
 24 there's going to be any protection of areas, sites, religious  
 25 use areas. The Tribes have to step up, step forward and take

1 on the process. And I know it's sensitive. It's sensitive to  
 2 our treaty council because it's federally regulated IRA  
 3 mentality. But you know these documents were sent out. They  
 4 were left out, you know, it would have been nice if we had an  
 5 alternative.

6 But you know I want to get back -- the reason  
 7 why I'm saying this is I'm trying to answer my Auntie  
 8 Elaine's question on what the laws enact, and if you guys  
 9 strongly feel that the information is a lot to grasp, a lot  
 10 to read, I want you to verbally say on that mike that you  
 11 want an extension. I want you to say your name and I want  
 12 you to say what organization you're part of. That's what this  
 13 EIS process is.

14 MR. RED CLOUD: I want to ask you a question.  
 15 You talk about tribe, okay, the question I want to ask you;  
 16 you talking about tribe, yesterday I told the people that  
 17 treaty tribe and a tribe -- in a tribe can't make no agreement  
 18 or talk about our rights in treaty. Because under the United  
 19 States Constitution we do not belong. That I told you that  
 20 before.

21 In human rights there's laws, like I told you  
 22 yesterday, there's laws there and what you was trying to tell  
 23 the people here, I can't get it, because we had our rights as  
 24 treaty people, and the way you say you really went through  
 25 this, you helped in making this, on this here, what you're

1 doing, because I don't think you have rights, because you have  
 2 an education. I went through a lot of young men like you, and  
 3 they try to tell me.

4 But like tribe, I ask him, who are you? You  
 5 have to come and tell me before you do anything, because I'm  
 6 head of the eight reservation chairman, and I work with a lot  
 7 of elders. They are all gone. I'm here. I'm protecting  
 8 these younger people, and I could see right now, I know  
 9 what's going to happen. I'm not just come yesterday. I know  
 10 what's going on. I know what's going to happen. Last night  
 11 we talk about what we're going to do. That's what we're  
 12 going to do.

13 For instance, they try to shove a law to me on  
 14 the Park Service, Custer Battlefield. There's a monument.  
 15 We don't want it, but look what they are doing. They keep  
 16 finding us, cost \$30,000. We spent \$30,000, we got to put --  
 17 no, what did we get out of that? Past years there's others,  
 18 what did we get, nothing. How about this way, you're going to  
 19 use our history there, what are we going to get out of it?  
 20 People say, no, they walk out of there. Well, that's the way,  
 21 we're going to go to court with it.

22 The same way with this here. There's a lot of  
 23 things that you have to look into, the tribe, but anything  
 24 that you have to do you have to come to Lakota people, the  
 25 treaty tribe, and they are the ones that are going to go to

1 court with these people here. I have to go to court with  
 2 these people, and so you have to really be careful what we  
 3 are doing here. And we're going to tell these people how we  
 4 feel today, and we're going home and we're going to be ready,  
 5 get ready.

6 MR. TERRY GRAY: Thank you. Any questions?  
 7 MR. JOHNSON HOLY ROCK: I made appearance here  
 8 yesterday -- I made an appearance here yesterday and made a  
 9 statement in speaking for those who couldn't speak for  
 10 themselves, primarily the very young and the elders culturally  
 11 restricted from revealing what they feel in words.

12 In our culture respect is so engrained and so  
 13 deeply embedded. In a gathering of this type there are many  
 14 who harbor thoughts but are unable to say them, a silent  
 15 majority, when you look at it from a numerical standpoint.

16 Since my trip to Lower Brule, which is the  
 17 first time that I became aware of this -- of something  
 18 called an EIS, and I've been content to let Tribal  
 19 governments trust on a government-to-government relation as  
 20 they like to speak about, but they have not been very  
 21 active. And I only became aware of this matter by Mr. Scott  
 22 Jones.

23 In fact, he's not here, but through him I  
 24 became aware that there was much more than what I knew. I  
 25 have not even skimmed the surface. There's thirteen volumes

1 of this EIS and the only one I had a chance to look at was  
2 the executive summary, was the title, summarizing of the  
3 thirteen volumes perhaps.

4 This I don't know, and if it is, it's very  
5 meager for we, the Lakota people to even have a glimmer of  
6 comprehension. Although I have a vague idea of where this  
7 is going, it refers primarily to the environment and there  
8 are many different environments; social environment, natural  
9 environment, all these different kinds of environments.

10 In this case it seems more complicated because  
11 it covers many areas. References have been made to  
12 archeological questions, cultural questions, historical  
13 questions, all contributing collectively to the issue of  
14 environmental impact statement or study.

15 And for the Surface Transportation Board wanting  
16 to know everything compiled in thirteen volumes in the time  
17 that they have set is totally unfair. Not only do we, the  
18 native people of this continent, have not given thought to  
19 the fact that we have not long walk the trail of civilization  
20 that the non Indian community has brought into this country.

21 As was just mentioned a minute ago, reference to  
22 oral history. Oral history -- I don't know how much  
23 credibility is allowed and believe vested in oral history by  
24 the historical authorities that study us through our oral  
25 history; how much importance, we don't know. But when it

1 comes to issues of this nature every step of the way the  
2 native people of this continent have to prove themselves to  
3 justify our position, which should not be. We should be  
4 permitted equal opportunity for the chance to do that.

5 When we are faced with issues of this type with  
6 a deadline, a time line even that we have problems with. It  
7 is our cultural nature, we don't count time in 24-hour  
8 segments. Time begins at the break of day and it's not  
9 broken up in different parts or numbered parts to be  
10 followed.

11 It was only since our relationship with the  
12 United States, the people who crossed the vast ocean to come  
13 here looking for a better place, looking for freedom, because  
14 they themselves were persecuted in their own countries, then  
15 when they realized they have a superior position to us as a  
16 people who are not yet -- who have not yet reached the stage  
17 of their civilization they took unfair advantage of us.

18 It's reflected in court decisions, and  
19 interpretation, even leading to our treaties. Treaties were  
20 written in a language of predominant culture. The Supreme  
21 Court took note of this and declared it was unfair for a  
22 civilized nation to take advantage of a people who did not  
23 have a written language. This had been our relationship for  
24 over 150 years.

25 Even to this moment, as I pointed out to you

1 yesterday and again today, thirteen volumes for a people who  
2 have just now reached a stage of civilized progress, to be  
3 able to comprehend something understandably is expecting too  
4 much. And despite it, from where I sit I -- to me the  
5 officials present here today to confer with us, to find out  
6 where we are, are themselves restricted by regulation, law,  
7 interpretation of higher authorities, and we are still  
8 disadvantaged.

9 We are not -- we have not been given credit for  
10 just being a plain, existing species of human race. Not  
11 looking at the different races and cultures that occupy this  
12 country today, if I were to make a decision looking toward the  
13 date set of January 5th, I'm prepared to say no to this EIS.  
14 I disagree with it in totality. Looking at it from the  
15 standpoint of our position as a native people of this  
16 continent, I disagree, and my disagreement would stand up to  
17 that date and beyond because it's unfair.

18 And the Supreme Court has already pointed out  
19 that any flavor of ambiguity in any instrument presented to  
20 native people must be interpreted in favor of the Indian  
21 people, despite whatever the interpretation may be, it must  
22 lean toward those who are disadvantaged on the basis of a  
23 negotiation that is being desired.

24 So this is my position. Of course there are many  
25 people here who have this opportunity to stand up here and

1 speak to let you know that there are, I think, more feelings  
2 and thoughts. But because we are native people, culturally  
3 deeply respectful of any of those around us, that we are  
4 afraid to speak. We are very reserved in nature, and of  
5 course our relationship has been reflected; we have been taken  
6 advantage of because of our cultural nature. It is  
7 interesting for you and I to make an appearance of any  
8 gathering of this nature and see the imbalance of the state of  
9 negotiations.

10 So if those of you who are here today would have  
11 been selected to conduct this negotiation on EIS, unless those  
12 in position of having weight to their word that we can not, it  
13 is better to come to a one-on-one understanding of  
14 preponderance of thought here today leans toward the time  
15 line. But as I understand, the Surface Transportation Board  
16 is not prepared to extend that.

17 And to those that have been able to communicate  
18 here, it would be better if we just flat came out and said no,  
19 we don't -- we have not been accorded a fair opportunity to  
20 address the environmental impact statement affecting the DM&E  
21 Railroad. And the permit that is going to be issued on the  
22 basis of this EIS, I would say -- I would recommend no. No  
23 amount of time can be permitted, and we say no to the entire  
24 proposition presented by the DM&E, and make it known with no  
25 reservation to the authorities who are going to review this

1 issue that we sit here with today.

2 We have to be -- we can't sit around and  
3 procrastinate. We're just talking to death and not  
4 accomplishing anything. So we have to take the position, a  
5 position that lets, you know, the feelings of the native  
6 population of this country, specifically in relation to DM&E,  
7 which is the point of issue here. I want to let it be known,  
8 those of you who are in official -- in attendance in an  
9 official capacity, that if no time line can be extended, we  
10 flat come out and say no, no, a thousand times no. Thank you.

11 MR. TERRY GRAY: Thank you for your comments. I  
12 wanted to address the gentleman in the back who talked about  
13 an agreement in regards to the EIS. Anybody go get the volume  
14 number four, 7.5 says negotiated agreements. There's nothing  
15 stopping the treaty council from sitting down with the  
16 president to say, let's talk about that background, you know.

17 There's nothing stopping you under this section  
18 of the EIS, and so when you guys have your next treaty council  
19 meeting, look at that negotiated agreement. You have the  
20 authority to sit down with the CEO of the company to state  
21 your address, but I'm going to get back on track, real quickly  
22 want to mention two things, and I think we have copies of the  
23 MOA -- or while that's being handed out I'll talk and then let  
24 you have the floor.

25 Every tribe put the stipulation in the MOA and

1 that stipulation allowed the Tribes to take control of the  
2 identification and treatment plan, and I was reading it last  
3 night and it was still a little weak area there, but Rosebud  
4 agreed to this meeting on the conditions that there was a  
5 series of environmental meetings, public input meetings.  
6 There was not one for the Tribes, so we agreed to this  
7 meeting so that we could get this information out, so we could  
8 in depth discuss these draft documents.

9 But what I'm trying to do is because -- and I  
10 stand corrected, there are now three Tribes that submitted  
11 comments in regards to all this documentation; those Tribes  
12 are Standing Rock Sioux Tribe, Lower Brule and Rosebud, out of  
13 the 20 some -- what was it, 30 some potential Tribes.

14 So this is the reason why we're having this  
15 meeting, you know. As cultural resource people we just felt  
16 that it would be an informational meeting to look at some of  
17 the issues that might have been overlooked or we never saw.  
18 Or if there is some questions in regards to something.

19 And there again I'm going to remind everybody,  
20 it's okay to oppose anything, any part of this EIS, to say  
21 your name, where you're from, oppose which section of the  
22 environmental impact statement.

23 But for this agenda, for this morning I want to  
24 be exclusively on the agenda on this Memorandum of Agreement,  
25 ID Plan and Programmatic Agreement because, you know, there

1 are Tribes that are not going to be, but also in this  
2 stipulation, if there's a tribe that doesn't care to be a  
3 signatory, there's a dispute or objection, a resolution in  
4 that document that still allows participation of Tribes,  
5 defining what levels of participation they want to be in.

6 As far as Rosebud, we do contract archeology.  
7 We're in depth. We submitted comments in regards to all the  
8 archeological, ID Plan, I believe Rosebud was out of the  
9 working group. We sat down at the State Historic  
10 Preservation office in Rapid City, South Dakota, and as  
11 usual it was a big jurisdiction dispute, the state telling  
12 the Tribes, You guys just stay on Indian lands. You have your  
13 own jurisdiction.

14 And so that's why we had to reflect back to  
15 those Federal laws under historical and cultural  
16 preservation, that allows us to preserve and protect the  
17 sovereignty of the participating Tribes or Indians involved  
18 in the process.

19 And has everybody gotten a copy of that MOA? And  
20 while Claire's handing it out, I got the gentleman in the back  
21 and then I'll start with you.

22 MR. ALLEN FLYING BY: (speaking in Lakota).

23 You want a translation you said, so it can be  
24 recorded. Good morning. Where I'm coming from, my name is  
25 Allen Flying By, and today I remembered some treaty people

1 that I seen and heard meeting as I was growing up and went to  
2 the different reservations, and I mentioned their names here  
3 Mattie King, Garfield Grassrope, these are all chiefs, the  
4 real chiefs, Lakota chiefs, Simon Broken Leg and Mr. Fills  
5 Pipe, Mr. Gareau and my father Joseph Flying By.

6 That's where I'm coming from, and at their  
7 meetings when they had these they talked in the Indian  
8 language and there was some more people, I can't remember  
9 their names, but they talked in their language and they  
10 talked about the most important issues and that was our  
11 language, our way of life and future generations and where  
12 they are going to live and, you know, what they are going --  
13 how they are going to live. And so to protect those, and  
14 like people mentioned natural resources that are there also,  
15 and how they can be used in good ways, and so that's where  
16 I'm coming from.

17 And I mentioned that the young lady, the lawyer  
18 mentioned that she comes from the President Clinton's office,  
19 and I don't know if that's true; is that true?

20 MS. VICTORIA RUTSON: I live in Washington, but  
21 not exactly President Clinton's office.

22 MR. ALLEN FLYING BY: But you work for his  
23 administration, right?

24 MS. VICTORIA RUTSON: I work for an agency that  
25 President Clinton is ultimately our boss; that's right.

1 MR. ALLEN FLYING BY: And so it's good that  
2 you're here today, yesterday, today and tomorrow, to share  
3 this proposed project across Indian country. And what I would  
4 like to know is where your stand, or where the president's  
5 stand is regarding treaties, treaty agreements with our  
6 people. Does he recognize them?

7 Like you mentioned government-to-government, you  
8 come here and that's how you're dealing with this, you're  
9 having this proposed hearings that you're dealing with our  
10 people, government-to-government, and so does the President of  
11 the United States respect our treaties? Do they respect them  
12 as the supreme law of the land? I wondered if I could have an  
13 answer to that.

14 MS. VICTORIA RUTSON: I know what you want me to  
15 say and I think you know what I can say. The best I can tell  
16 you is my job is to make sure that the three decision makers  
17 at the Surface Transportation Board understand how you feel  
18 about the treaties. I will take that message back to my  
19 bosses in Washington. That is the most I can promise you, and  
20 that much I will do.

21 MR. ALLEN FLYING BY: Because my thoughts or  
22 other concern is there's a lot of young people on the  
23 reservations who are just beginning to learn about the  
24 treaties and what they mean, and these happenings outside of  
25 our reservation that affect -- you know, the laws that are

1 made and like the environmental impacts on their health, on  
2 their emotions, everything that has impacts on, long term it's  
3 called historical trauma, and so they need to -- they need  
4 education. They need to learn.

5 And to rush something like this that you're doing  
6 wouldn't be fair to our people, especially the younger  
7 generations because, you know, one glance at our reservations  
8 will indicate -- like you know a good example people mentioned  
9 was the Burlington Northern that runs through our reservation,  
10 look at all the damage that it has caused, the pollution and  
11 the waste and everything else that's there, the Shadehill Dam,  
12 you know, the pollution along the Grand River, people -- our  
13 kids can't swim in it, stuff like that that are very  
14 important.

15 Like we mentioned, diabetes, cancer, lung  
16 diseases, and all these disorders that our people have, PTSD,  
17 I call it PTSD, I have it too. But anyway, those need to be  
18 looked at, and how you know what is being proposed, how all  
19 those things are going to, you know, impact our people on the  
20 reservations. So to rush what you're doing there, there's no  
21 hurry. We're not in a hurry to die. We want to have some  
22 good years in our lives, and our children, to have some good  
23 years in their lives and their children, even your children  
24 because it affects everybody, not just our people.

25 So that was one of my concerns that there should

1 be no rush on this. There should be no time limit at all, and  
2 that any kind of extension that our people ask for to be  
3 granted, whether it's because there needs to be studies, the  
4 air, everybody mentioned, you know, NAGPRA, the burial  
5 grounds, all the -- this is Indian country. Our people have  
6 lived here for many generations and you'll find when you're  
7 making roads in South Dakota, they are finding, you know,  
8 grave sites all the time. The water -- they lowered the  
9 rivers and graves showed up, bones showed up, all these  
10 things.

11 And so that's what I would like to ask, and I  
12 want to learn more from, you know, the information that you  
13 have, because I don't have a lawyer that's recognized. I  
14 have some people with some degrees here, which you know the  
15 government recognizes, and you need to recognize us as  
16 equals. Those should not be factors.

17 So there needs to be careful translation of  
18 these treaties in Indian way, our language and translation  
19 of what they mean to our people and to you, how it's  
20 interpreted. So some of the things that are missing is  
21 someone here that's legally oriented, legally minded to  
22 translate what's going on here legally, because you know  
23 somebody mentioned court, you know, we go to court every day.  
24 You know, we can sue everybody, but they say we're Siouxs,  
25 but we're not a Sioux, it's Lakota. It's just a word

1 attached to label us.

2 We've never called ourselves Sioux people.  
3 Other people have called us Sioux. And we say aca' je. We  
4 are common people, but we're here because we care about  
5 what's happening on our reservations and we care about  
6 dysfunctions that are going on in our lives, and we care  
7 about the great rage that existed within our people and  
8 great pain that exists and all the unhealthy life-styles that  
9 our people have.

10 I can honestly stand here and say today in a  
11 couple months it will be nine years to be alcohol and drug  
12 free in my life, and feel good about what I do. I'm not  
13 fooling you. I'm not fooling God. I'm not fooling anybody.  
14 I don't want to fool anybody in my life. I want to be honest  
15 and say you need to deal with us in a honest way.

16 Your word should be good, and if somebody above  
17 you, you know, does something that's dishonest, you need to  
18 stand up and defend that also, you know, stand up with us if  
19 we're honest and you were honest, and somebody else breaks  
20 that agreement, then you need to support us also, you know.  
21 More people need to support us, and so that's what I want to  
22 share so -- (Speaking in Lakota.)

23 MR. TERRY GRAY: There was one gentlemen before  
24 you that wanted to go. Go ahead.

25 MR. JAMES KANGAS: I wanted to say good morning

1 to all the elderly here, and I thank you for this opportunity  
 2 to speak in you. I'm James Kangas from the Bureau of  
 3 Reclamation from Rapid City, and I spoke a little bit  
 4 yesterday about the law, and I thought that I would just take  
 5 this opportunity to acknowledge that I realize there are a lot  
 6 of people in this room who are critical of how long this EIS  
 7 document is and that it takes a lot of time to pour through  
 8 that information and that they are very frustrated with the  
 9 Wicata way and there are a lot of Wicata frustrated as well.  
 10 I work for the -- I don't work for the Surface  
 11 Transportation Board, I work for a Federal agency who has been  
 12 asked to review a permit for a crossing. This document is  
 13 long because we live in a legal environment. These days you  
 14 can sue a car manufacturer for getting your thumb pinched in a  
 15 door. It sounds stupid, doesn't it, but it is true. You can  
 16 find someone out there that will represent you in a case.  
 17 These days you can step wrong and sue the person that made  
 18 that shoe. You broke your leg, liability, two million  
 19 dollars. Sounds stupid, but it's true.  
 20 The NEPA process that we are dealing with was  
 21 developed in 1969 in the National Environmental Policy Act.  
 22 Why was that act developed? Because people in this country  
 23 were fed up with Federal agencies going out, being arbitrary  
 24 and capricious and building things without talking to anyone  
 25 or disclosing what kind of affects to the human and cultural

1 environment those projects would have. I wanted you to  
 2 understand that, and you probably already do. For those of  
 3 you who do, I'm reiterating it.  
 4 The same goes for cultural resource laws, very  
 5 early on in this country, at the turn of the century, people  
 6 were coming from overseas. They were vandalizing and looting  
 7 archeological sites and they were taking those collections  
 8 offshore back to Europe for their museums, and the British  
 9 Museum in England is full of stuff from all over the world;  
 10 let's not be in denial about that.  
 11 Then in 1966, once again you'll notice this is  
 12 very close, these cultural resource laws came into existence  
 13 before the National Environmental Policy Act. Notice it's  
 14 policy act. It is not protection, it is policy act. In 1966  
 15 the American people said we don't like how cultural resources  
 16 are being managed Federal agencies seem arbitrary and  
 17 capricious in the management and the effects of these cultural  
 18 resources. We want a law. That's why that law is there  
 19 today.  
 20 This act has been revised as recently as a year  
 21 ago and that revision has been under controversy, and it too  
 22 is under litigation. We'll see how that works out. My point  
 23 is, the very thing frustrating people in this room is the  
 24 outlet. It is why we are here. The length of this document  
 25 is because the Federal agency shall disclose the effects of

1 its undertaking, and that process of disclosure has created  
 2 thirteen volumes, or whatever the heck it is. I haven't  
 3 counted them.  
 4 So I'm just telling you all today that be  
 5 patient with the process. But on the other hand, if you need  
 6 more time, I recognize -- I have recognition that you're  
 7 frustrated with that and you may need more time to review  
 8 those things. I don't know if -- Mrs. Quiver mentioned a  
 9 lawyer. Well, maybe a lawyer could help you, maybe not. I  
 10 don't know. Thank you.  
 11 MS. FAITH TAKEN ALIVE: For the record my name  
 12 is Faith Taken Alive from the Standing Rock Lakota  
 13 Reservation, and I would like to read Resolution Number  
 14 002-2000 Standing Rock Oceti Sakowin Elderly Treaty Council.  
 15 Whereas, The Standing Rock Oceti Sakowin Elderly  
 16 Treaty Council are committed to: The enhancement of the  
 17 Lakota/Dakota/Nakota world view, the protection of our  
 18 culture, spirituality, cultural sites, burial sites, the  
 19 environment, including water, land, natural resources and air;  
 20 and our vested reserved rights guaranteed by the Fort Laramie  
 21 Treaty of September 17, 1851, and the Fort Laramie Treaty of  
 22 April 29, 1868; with the Lakota/Dakota/Nakota Nations, and  
 23 the Standing Rock Sioux Tribal Constitution, Tribal Codes,  
 24 Tribal Ordinances, and,  
 25 Whereas, The Elders prior to and during the

1 Federal Government Treaty process of the 1800's recognized  
 2 the Tiospayes and leaders of the Oceti Sakowin of the  
 3 Lakota/Dakota/Nakota Nations, including the signatories to  
 4 the Fort Laramie Treaties of 1851 and 1868; and,  
 5 Whereas, The descendants of the Oceti Sakowin  
 6 concluded that the Elders must organize in an advisory  
 7 capacity, to accept their inherent responsibility to protect  
 8 the interests of the Oyate on Standing Rock and other Tribes  
 9 on a local, regional, national and international level; to  
 10 assist in the decision making process, to represent the  
 11 Elders in consultation regarding issues impacting our Treaty  
 12 rights, human, civil and other rights with Tribal, State or  
 13 Federal representatives; and,  
 14 Whereas, It has taken the Tribes 131 years to  
 15 take possession of our cultural sites, burial sites and  
 16 protection of our culture through the Native American Graves  
 17 Protection Repatriation Act and the National Historic  
 18 Preservation Act, the Archeological Resource Protection Act,  
 19 and National Environmental Policy Act; and,  
 20 Whereas, Destruction of the cultural sites,  
 21 burial sites, rock art, and the destruction of the Black Hills  
 22 National Forest and the Pine Ridge Indian Reservation by acid  
 23 rain and pollution from coal dust, sulfur dioxide, sludge  
 24 waste, and other hazardous waste; and,  
 25 Whereas, The DM&E track and its trains will also

1 stop in migratory path of the pronghorn antelope, thereby  
2 impacting the ecosystem, and.

3       Whereas, Article II, Section 6 of the Treaty of  
4 Fort Laramie of 1868 states, "the Tribes will not object to  
5 works of utility or necessity", DM&E cannot be identified as a  
6 necessity as there are already two existing railroads  
7 providing services; and.

8       Whereas, Article I of the 1868 Fort Laramie  
9 Treaty states "the Government of the United States desires  
10 peace and pledges its honor to do so, and.

11       Whereas, The DM&E has not shown the proper  
12 respect due Tribes or Treaty Organization resolutions opposing  
13 the expansion of DM&E, and.

14       Whereas, The Oceti Sakowin deems this DM&E  
15 project of "little necessity" pursuant to Article II, Section  
16 6 of the Fort Laramie Treaty of 1868, now.

17       Therefore be it resolved, that the Oceti Sakowin  
18 Elderly Treaty Council of the Standing Rock Nation will  
19 strenuously and vigorously oppose this expansion; which  
20 requires three-fourths adult male vote pursuant to the 1868  
21 Fort Laramie treaty.

22       We, the undersigned Chairman and Secretary of  
23 the Oceti Sakowin Elderly Treaty Council of the Standing Rock  
24 Nation do hereby certify that a quorum of members present at  
25 a duly convened and regularly called, notice and convened

1 meeting held on the 22nd day of November 2000; and that the  
2 foregoing resolution was duly adopted by affirmative vote of  
3 thirteen members with zero opposing, and with one not voting.  
4 Dated this 22nd day of November 2000.

5       Attested by Mary Jane Tiokasin, Secretary Oceti  
6 Sakowin Elderly Treaty Council of Standing Rock and Jeff  
7 Cadotte Vice Chairman of the Oceti Sakowin Elderly Treaty  
8 Council of Standing Rock.

9       I would like to at this time enter this  
10 resolution of Oceti Sakowin Elderly of Standing Rock into your  
11 official and formal record. I would also like to read my  
12 written comments to the Surface Transportation Board.

13       I, Faith Taken Alive, member of the Oceti Sakowin  
14 and the Standing Rock Nation oppose DM&E's proposed  
15 construction of a new railroad line. The lands you intend to  
16 trespass upon belong to the Great Sioux Nation. We have not  
17 surrendered title to this land to any entity, any person, any  
18 corporation, not even the United States Government. I, a  
19 member of the Great Sioux Nation, retain aboriginal title, as  
20 do all members of the Great Sioux Nation.

21       Specifically, we or I, retain ownership as a  
22 member of the Great Sioux Nation of all mineral rights as an  
23 aboriginal title owner in perpetuity. This railroad line DM&E  
24 grants a mere pittance of attention to our mineral rights.  
25 More over, the cultural, burial and paleontological sacred

1 sites have not been prioritized for protection by DM&E.

2       Furthermore, DM&E has not disclosed to the public  
3 Phase I and II of the evaluation of cultural resources for 317  
4 miles of railroad reconstruction from the Minnesota border to  
5 Wall, South Dakota,, Finance Docket No. 33407, Volume I, dated  
6 July 2000.

7       We request more time and that the deadline for  
8 this EIS be extended for one year, or twelve months. Again,  
9 we have been deceived by DM&E's non disclosure of the  
10 "Evaluation of Cultural Resources" in all parts disclosure to  
11 the public is not complete.

12       Lastly and with regard to the MOA no mention is  
13 made of EPA, Environmental Protection Agency, a Federal  
14 agency. The Pine Ridge Indian Reservation will be adversely  
15 affected by acid rain and pollution from coal dust, sulphur  
16 dioxide, sludge waste, and any other hazardous waste. You are  
17 jeopardizing lives of aboriginal, indigenous peoples of the  
18 Great Sioux Nation without complete disclosure. Signed Faith  
19 Taken Alive, November 29 year 2000. Thank you.

20       MS. CLAIR GREEN: Thank you very much for those  
21 comments.

22       MR. FREEMONT FALLIS: My name is Freemont  
23 Fallis. I work as a coordinator for the Sicango Treaty  
24 Council, and I'm also a member of the Black Hills Sioux Nation  
25 Treaty council. About two years ago the DM&E people came to

1 Rapid City to the Black Hills Sioux Nation treaty counsel  
2 meeting proposing the DM&E Railroad and at that time Black  
3 Hills Sioux Nation Treaty Council. We said that we concurred  
4 with the DM&E's EIS process on this proposed railroad, but in  
5 the process that they do this under the NEPA process and we  
6 would reserve our comments later.

7       What I would like to ask these Federal agencies,  
8 every one of you people have your own guidelines under the  
9 NEPA process. You all have your own ways of doing your EIS in  
10 which the tribe's only time we have a say-so is when it's  
11 within our boundaries of the reservation.

12       What -- you people did a very good job of  
13 skirting these reservation boundaries; therefore, you could  
14 say that you followed the NEPA process. You should have at  
15 least had the decency to contact some of our Tribal historic  
16 preservation officers, such as Tim Mentz from Standing Rock,  
17 Bronco Lebeau from Cheyenne River. But instead I suppose you  
18 people used the SHPOS instead.

19       So this is -- I don't know, I can't agree with  
20 this, what you're proposing today, and I would like to further  
21 urge some of these Tribal elected officials that are here to  
22 make the official statement here whether you are for this or  
23 against it.

24       And I would like to appreciate today and thank  
25 Chairman Kindle and Chairman Jandreau for being here today.

1 At least they care for their people, and I think we have some  
2 elected officials from Lower Brule here, two councilmen and  
3 two from Standing Rock. And so I would kind of urge them to  
4 make their official statement so the elders know where we  
5 stand. Thank you.

6 MS. CLAIR GREEN: Thank you, Freemont. For those  
7 of you that weren't here earlier this morning, when we started  
8 off we wanted to try to address two documents that are a part  
9 of this draft EIS and continue with open comments later this  
10 afternoon. Now if the group doesn't want to do that, we can  
11 continue with open comments all day.

12 However, the two documents that we wanted to  
13 talk about were really to help people understand some of the  
14 things that have been done already. These documents are  
15 still in draft form. They still need a lot of comment. They  
16 can be changed and a lot of people, as we've heard from  
17 comments, aren't aware of them or haven't seen them or  
18 weren't involved with them. So from that point of view, I  
19 think it's important to talk about them.

20 And again I think I'll stress that no one is  
21 asking for anyone to sign anything today or to support  
22 anything. This is purely information, and to try to help  
23 people understand certain parts of this draft document. I  
24 know it's huge, and it's very intricate, and I myself am  
25 having trouble with it. And I think everyone's comments about

1 more time and the length of it are very well taken.

2 So we tried to pick out a couple of things where  
3 there has been a lot of participation, where people like Tim  
4 Mentz two years ago met with us to start talking about this  
5 Programmatic Agreement. Lower Brule has been involved.  
6 Rosebud has been involved. And we tried to involve some other  
7 Tribes who were not apparently interested in coming.

8 But in answer to, or in response to Freemont's  
9 comment, we have tried very hard in the cultural aspects of  
10 this to involve the preservation people. But again, we can't  
11 force involvement, you know, that's why I'm really glad that  
12 so many people are here at this meeting.

13 And I'll stop talking and leave it at that. We  
14 would like to try to get through the Memorandum of Agreement  
15 if we can possibly at all, and then reserve all of the open  
16 mike comments for this afternoon.

17 MR. MICHAEL JANDREAU: Thank you. Good morning.  
18 I've had an opportunity to represent our people for a long  
19 time. You know, it's a very generous group of people that I  
20 work for, and one of the things that I learned a long time  
21 ago was generosity and kindness don't always go in the same  
22 pocket.

23 So sometime in recognizing leadership and the  
24 ability to allow you that leadership means that more is going  
25 to be demanded of you, and that's the way I see this process

1 right now. You have reaction to something that seems as  
2 though it's an impending disaster about to be wrecked upon  
3 the Sioux Nation. I don't look at it that way. I look at it  
4 as a potential opportunity that my council and the elders from  
5 our tribe have to weigh, have to deal with, have to have as  
6 much information as possible to make any kind of direction or  
7 decision.

8 I've heard here today that there is a lot of  
9 interest of delaying the finalization of the EIS for a period  
10 of time. I don't think there's anything wrong with that. And  
11 I believe, Clair, you've had enough open discussions with  
12 Scott and myself about this process, that you know that and  
13 realize that.

14 Whenever, at least in our country, whenever  
15 something seems to be have this intensity and need to be done  
16 right now, it's always met with a great deal of concern about  
17 what is the background for this, why is this happening, who is  
18 going to gain monetarily out of this. I think that fear is  
19 real. It's real in the mind of the possessors.

20 We at Lower Brule had hopes of trying to prepare  
21 for this meeting, held a meeting last week, and out of that  
22 meeting came some very good things as far as the interest and  
23 the concerns of the people who chose to attend it. Not  
24 everyone we invited attended. Some treated us with a great  
25 deal of disdain because we didn't invite them. But we didn't

1 feel that the people who were upset about it was important  
2 that they be there at that time. People we invited were  
3 people that we believe had the most interest in trying to  
4 come to some real decision for this meeting.

5 I believe I can say with confidence to my  
6 council members here who serve on the Tribal council with me,  
7 that we are willing to continue to meet with just the Tribal  
8 people to continue to discuss this, and to continue to look  
9 at those things that are causing the greatest amount of  
10 concern, and either develop a position that is more cohesively  
11 that of the nation.

12 We need to recognize that we, after years and  
13 years of suffering as an oppressed people, are beginning to  
14 realize that the course of action that must be set must be  
15 set by ourselves. And if we depend on that course of action  
16 to be imposed upon us, we are not serving our people. So  
17 although some of the remarks here seem to be totally  
18 negative, they are not negative. There are remarks borne out  
19 of real concern, real interest, real need to be recognized as  
20 participants in this whole process.

21 I believe what you are talking about presenting  
22 will help us totally gain greater knowledge about this  
23 process, but I believe directly -- and what I'm gathering  
24 is the mind set is right now. It has got to continue to be  
25 approached with a great deal of caution. Thank you.

1 MR. SCOTT JONES: Good morning everyone. I  
2 apologize for being late. I have been lead reviewer for the  
3 Kul Wicasa on this project pretty much since the calls went  
4 out from Clair Green, working with Burns & McDonnell, that  
5 they are going to begin a process of coordination and  
6 consultation. It's been a very difficult process for those of  
7 us that took it seriously and attended all of the meetings and  
8 tried to bring good things into the process, because the back  
9 drop there are so many negative things.

10 I have several comments I want to make, but  
11 before I do, I would like to thank, first of all, Kevin  
12 Schieffer. For 15 years I have worked in environmental and  
13 cultural resource areas, and I have never met a private  
14 business interest that has been so willing to hear our  
15 concerns, listen and try to deal with those concerns in a  
16 responsive manner.

17 I would also like to thank Vicki Rutson. In  
18 those same 15 years I believe that I have never come across a  
19 Federal agency that has been more willing to work with Tribes  
20 and attempt to develop processes that are conducive to the  
21 realization of our goals and aspirations. Thank you both.

22 I would also like to thank Clair Green. I don't  
23 know if anyone other than myself has put her through the fire  
24 like she has kind of gone through with us. I'm sure that a  
25 lot of us have stepped out of our normally respectful

1 approaches to other humans and taken a lot of our frustrations  
2 out on Clair. I know I have, and I want to thank Clair for  
3 being involved in this process.

4 I have a prepared statement that I would like to  
5 read, and then I'm going to attempt to at least get through  
6 the Executive Summary in very short order. I am kind of  
7 prepared to go through eight of the volumes with comments, but  
8 because there are a lot of group dynamics, and out of respect  
9 to the elders, I'm only going to focus today in this short  
10 time that I've been allowed on the Executive Summary, and on  
11 Volume I, purpose and need.

12 Since February of 1998, the Bands which  
13 collectively comprise the Lakota or Titowan Peoples, have  
14 been wrestling with an issue that is very complicated and is  
15 difficult to understand. That issue is the granting of a  
16 Surface Transportation Board permit for the Dakota, Minnesota  
17 and Eastern Railroads' proposed Powder River Expansion  
18 Project.

19 There is a basic fact, that though attempted to  
20 be recognized, has only been given slight acknowledgment in  
21 the Draft Environmental Impact Statement. This is the fact  
22 that over 132 years ago the Lakota and other bands made a  
23 Treaty with the United States Government that recognized and  
24 guaranteed certain rights, including the establishment of a  
25 permanent homeland. The Fort Laramie Treaty of 1868 and the

1 preceding Treaty of 1851 unequivocally recognized that the  
2 Lakota were to be treated as a nation, as defined by  
3 established principles of international law.

4 Since nearly the date of ratification, the Lakota  
5 have sought to realize the full benefits and guarantees  
6 provided by these treaties. We continue to believe that the  
7 Constitution of the United States, which states that treaties  
8 shall be the law of the land, will eventually be upheld and  
9 promises made at the time of the treaties will be kept.

10 Under the principles of the Treaties of 1851 and  
11 1868 we believe -- which we believe remain in full force and  
12 effect, the process that is currently being followed, and  
13 which has been developed under the guise of the National  
14 Environmental Protection Act, as well as other laws,  
15 regulations, executive orders and policy statements, is  
16 illegal.

17 As a member of the Sicango Band of Lakota,  
18 currently residing on the Lower Brule Reservation, I wish to  
19 inform you that the entire area of new construction is within  
20 the established and recognized aboriginal territory of the  
21 Lakota. Again, under the principles of the above named  
22 treaties, this process is illegal. The area in question  
23 remains an unresolved treaty area from the perspective of the  
24 Lakota.

25 However, your laws and government have continued

1 to stifle our free expression, have continued to attack our  
2 right to worship and freedom of religion, and continue to  
3 attempt to diminish and compromise our rights of home rule and  
4 self determination.

5 As an oppressed people we understand that the  
6 United States has and will continue to make arbitrary  
7 decisions regarding our legitimate homelands, and that the  
8 fight for full recognition of the treaties and principles  
9 agreed to therein by both the United States of America and the  
10 Lakota peoples, must continue.

11 Today I am invited by my Creator to seek what  
12 means are available to us here and now, for the protection and  
13 preservation of our ancestral, sacred and cultural sites. We  
14 are forced to participate in a process which we consider  
15 illegal, under the terms of the treaties, to attain the very  
16 basic goal of protection of our places of worship, and the  
17 animals, plants and natural resources which are necessary to  
18 carry out our worship activities.

19 At this point I would like to look at the  
20 Executive Summary, and look on page ES6. On page ES6 a  
21 comment is made that the Corps of Engineers will be doing  
22 their EIS process in coordination with this process.

23 Recently I had a telephone conversation with  
24 the Environmental Protection Agency and their lead reviewers.  
25 It came to my attention that there are enormous amounts of

1 information vis-a-vis the Corps of Engineers 404 permitting  
 2 process that I or my tribe or any of the other representatives  
 3 have not had access to. Where is that information?  
 4 Where is the information that was developed in  
 5 regard to all of the Federal agencies permitting of  
 6 easements, right-of-ways or other types of agreements? I  
 7 believe, given the mistrust that exists, that the Corps of  
 8 Engineers should have had to have done their own EIS. I am  
 9 told that the information out there, the supplemental  
 10 information out there under the 404 permit process is larger  
 11 than the EIS document that we have been presented with by the  
 12 Surface Transportation Board.

13 I would like to move on to ES16. You have a  
 14 list there of individuals and groups that have met with you  
 15 and consulted. I want to point out to you that that list is  
 16 not comprehensive and does not represent the actual  
 17 participation in this process over the last two, two and a  
 18 half years.

19 Then I would like to go to page ES41 and 42.  
 20 Alternatives proposed under the Spring Creek, Piney Flats and  
 21 the Hay Canyon areas are extremely sensitive. Because of that  
 22 sensitivity we have not been able to determine, particularly  
 23 under the Hay Canyon, which alternative should be recommended  
 24 as the preferred. I understand that under this process the  
 25 STB has not made a decision of the three alternatives in that

1 you're waiting for more public input.

2 As lead reviewer for the Lower Brule, I need to  
 3 inform you that we have not been able to, for a variety of  
 4 reasons, including time, resources and logistics of getting  
 5 onsite to see these areas, we have not been able to come up  
 6 with a satisfactory recommendation, and we will not be able to  
 7 do so until we have an opportunity to gather more information,  
 8 an opportunity to meet more with our relatives on the Oglala  
 9 lands for cooperative planning and sharing of information.

10 These lands contain many sacred and sensitive  
 11 sites. Excuse me, these sensitive sites may not be able to be  
 12 shared with you. We may not be able to tell you what's  
 13 there. There's a grave concern that the work that's already  
 14 been done has basically developed documents that individuals  
 15 can review to find several sites that were in the non Indian  
 16 world previously unknown; that many of the Lakota carried  
 17 within their families and in their extended families  
 18 traditions and practices that revolve around these areas.

19 We do not have enough information to recommend a  
 20 preferred alternative in Hay Canyon. We also need to look at  
 21 the Piney Flats, Spring Creek issue. The proximity to the  
 22 Cheyenne River is extremely troubling.

23 I would like to go on to ES46, just to point out  
 24 that this is a place, on ES46, on the bottom text, it says  
 25 SEAI has deferred selection of a preferred alternative for Hay

1 Canyon, in order to consider additional public and agency  
 2 comment on the potential environmental impacts and available  
 3 mitigation for environmental resources along the Hay Canyon  
 4 alternatives. These areas are part of the cultural patrimony  
 5 of the Lakota people, not to mention the fact that these areas  
 6 reside within the exterior boundaries of the Great Sioux  
 7 Nation, as established under the 1868 Fort Laramie treaty.

8 I would like to go to page ES68. In this section  
 9 the STB or somebody has said that they are going to establish,  
 10 provide -- number one, middle of the page, second bullet,  
 11 provide citizens, communities, agencies, Tribes and other  
 12 interested parties with the community liaison for resolving  
 13 issues that may arise during construction or operation of the  
 14 proposed projects.

15 In the event that this railroad is permitted, I  
 16 would respectfully request a Tribal liaison be established,  
 17 specifically a Tribal liaison that works just with the  
 18 Tribes. I would like to go to page ES85. Again, you speak  
 19 generally at the bottom, and I would like to reiterate, we  
 20 need a Tribal liaison.

21 I have to jump back here, I'm sorry. ES73, I  
 22 find it rather troubling that you have a section on  
 23 negotiated agreements that does not refer to Tribes. That is  
 24 extremely troubling, given the fact over the course of the  
 25 last two and a half years, as the lead reviewer for the Lower

1 Brule people, this issue has been laid on the table time and  
 2 time again, and yet is not reflected in the executive  
 3 summary. However, it may be -- it may be that I have  
 4 overlooked a portion of the EIS somewhere that expands on this  
 5 and does refer to Tribes. As it stands, in my awareness so  
 6 far this needs to also include Tribes.

7 On ES95 I would like to ask who the air quality  
 8 work group is? You have a statement that the Applicant shall  
 9 comply with the final recommendations of the air quality  
 10 working group, consisting of agencies with appropriate  
 11 technical expertise which was established for this project.  
 12 Is there a Tribal representation on this body, the air  
 13 quality work group? And if so, who are they?

14 I would like to move on to ES97. Several of the  
 15 Tribes have expressed a great deal of concern over big game  
 16 migration routes, and on page ES97, under 78, it says prior  
 17 to initiating new rail line construction activities in South  
 18 Dakota and Wyoming, Applicant shall consult with the South  
 19 Dakota Department of Game, Fish and Parks, and the Wyoming  
 20 Department of Game and Fish to develop mutually acceptable  
 21 under and overpass designs to protect wildlife, particularly  
 22 big game.

23 I need to inform you that the Tribes have been  
 24 the stewards of a majority of the big game in this state;  
 25 that our reservations have been tended to; that we take care

1 of the big game populations, and if there are -- there is  
2 going to be any development of any kind of consultation  
3 process, Tribal wildlife officials absolutely need to be  
4 involved. There is a whole issue of unresolved treaty  
5 harvesting rights that's involved in this.

6 On number 79, right below that, again Tribal  
7 wildlife departments. The game is not static. It does not  
8 stay in one place. It crosses all jurisdictions all borders.  
9 So I think it's very important that Tribal wildlife officials  
10 are at least included with the state wildlife officials.

11 On the next page ES99, paleontological resources,  
12 it's rather troubling after all the discussions that we've had  
13 on Tribal monitors, that this section does not include a  
14 Tribal monitor on the paleontological resources. We have done  
15 an awful lot of footwork trying to get Tribal monitors  
16 established across the board in all projects, and  
17 paleontological resources are very much an important issue  
18 from the perspective of the Lower Brule.

19 On ES101 and 102, environmental justice, and on  
20 ES101 98, at the bottom, I would just like to ask that this  
21 statement be more inclusive. I'll read it. Applicant shall  
22 consult, coordinate with the Lakota Sioux Tribe to develop a  
23 hazardous material emergency response plan to account for the  
24 special needs of Native American persons on the Pine Ridge  
25 Reservation in South Dakota, particularly those inhabiting

1 Red Shirt, located less than 1.0 miles from the new rail line  
2 construction under Alternative B. This plan shall include  
3 applicant-sponsored training on hazardous materials for  
4 appropriate Tribal personnel.

5 I would ask that be extended to include the Lower  
6 Brule, the Crow Creek, the Rosebud and the Oglala. After all,  
7 Pierre and Ft. Pierre are not that far from Lower Brule, and  
8 the same impacts that our relatives on the Oglala will  
9 probably be impacting us.

10 On the same page ES102, at the bottom on 102,  
11 again this is troubling after all that we have shared through  
12 this process, if archeological reserves are encountered during  
13 projects related construction activities, applicants shall  
14 immediately cease excavation work in the area and inform,  
15 consult with the appropriate SHPO. Now we have done a lot of  
16 work on these agreements that apparently Clair is trying to  
17 present here. Well, this does not make any sense, because it  
18 is -- it goes to the opposite of the whole intent of the MOA  
19 and the PA and ID plan. This has to be struck. That's pretty  
20 much it for that document.

21 I want to say one thing. Again, there is a lack  
22 of statements that is threaded consistently throughout this  
23 document on the issue of treaty rights, Volume I, purpose and  
24 need. I don't think that -- wait, maybe I missed something.  
25 I'm sorry, I missed something back in the Executive Summary,

1 on page 103, ES103. There is a statement regarding a third  
2 party contract that apparently STB -- on page ES103, on number  
3 104, Applicant shall retain third party contractor to assist  
4 SEA monitoring enforcement of the mitigation measures on  
5 as-needed basis until Applicant has completed project  
6 construction and reconstruction activity.

7 In event there is a railroad, are Tribes allowed  
8 or Tribal members given an opportunity to bid on this? And  
9 what is that process and who do we talk to about that? It's  
10 very difficult, I have so many things here, but in respect to  
11 the elders I'm going to stop right here.

12 I want to make a formal request that a time  
13 extension be granted; that we are allowed to look at this  
14 EIS. We do not know whether we can trust the information in  
15 the EIS. We need the time to gather our resources and find an  
16 independent reviewer that has more technical expertise than I  
17 and several others that can look at this, Vicki, and tell us  
18 if this is a fair and reasonable document.

19 The whole frame of reference for this document  
20 is foreign to the goals and objectives of the Lakota peoples.  
21 We don't know what the frame of reference was. We need to  
22 have an opportunity. There's much frustration and confusion  
23 out there. I have been involved in this since the Tribes were  
24 first invited to participate. I am still confused. I'm still  
25 frustrated.

1 If I as lead reviewer for the Lower Brule people  
2 have still a great deal of frustration and concerns, how can  
3 I expect, as public relations director of my tribe, in good  
4 faith to sit here and give a response either way. I can not  
5 do that. We need more time. My people have not even had an  
6 opportunity for a public meeting. These things take a lot of  
7 time to plan and coordinate.

8 On big issues like this we have public meetings  
9 at Lower Brule, and we try and go through these things. But  
10 because of the time frame, because the 2000 documents,  
11 because we find out there's another 2000 some documents or  
12 pages that the Corps may have that we haven't even seen, that  
13 the Forest Service may have more documents that we haven't  
14 seen, that the BLM, that the Coast Guard, I don't know.

15 I see the Forest Service representative shaking  
16 her head no. Well, I don't know that, and this is the first  
17 time hearing, and frankly I'm really disappointed that I had  
18 to hear from the EPA that the Corps of Engineers had another  
19 enormous document just on the 404 permitting. There is a  
20 whole issue of unresolved treaty water rights in the entire  
21 project area that I thought the Federal agencies had been  
22 attuned to sometime ago.

23 With that, I want to thank you, Vicki, for the  
24 way that you drafted this Executive Summary. Again, I have  
25 tried to review the executive -- EIS's after EIS's, countless

1 EIS's have I involved and I want to thank you for making this  
2 a very readable document. Even though I've sat here and just  
3 criticized it on a variety of levels, I will forego tearing  
4 the rest of these documents apart and I will submit, in  
5 coordination with the Tribal elder committee and Tribal  
6 council fully expanded comments on the entire EIS. Thank you  
7 very much.

8 MR. TERRY GRAY: Mr. Red Cloud.

9 MR. OLIVER RED CLOUD: (speaking in Lakota.)

10 We're the people right here, standing right  
11 here, the tribe. We're the ones that have to decide, because  
12 responding we have talk and we have I think we have two  
13 reservations talk, I'll listen how they talk. I could see  
14 what they are talking about, and this is really important  
15 what we are doing today. We have to make -- try to make a  
16 mistake because there's a lot of fancy words in there.  
17 And you say negotiate. I can't negotiate nothing  
18 out of something that I really don't understand, and my tribe  
19 -- I could say my tribe because I work with the 68 Treat and  
20 they elect me. I have to see a stronger right, and you hear  
21 one chairman talk this morning, that the Indian tribe -- I'm  
22 glad they understand what we try to come up with today and  
23 yesterday.

24 But we're going to make a motion. Before I make  
25 the motion I have one more chairman here, Rosebud, I'm going

1 to hear him, how he talk and what he wants to do on his tribe  
2 here. This is the second biggest tribe in our reservations,  
3 eight reservations, and we have to work with the people. You  
4 can't do it yourself. You have to listen to the elders, the  
5 treaty people, because 1934 act just the other day, but we  
6 come from the way back, Red Cloud, Spotted Tail, Sitting Bull,  
7 we have to look back, sitting here listening, the more I  
8 listen, I go back and these are the people, the younger people  
9 now today that have education. When you have education,  
10 travel people because there are young people coming up,  
11 generations and generations are here. Now today, what they  
12 are going to go.

13 We can't give our land away. We can't give our  
14 rights away. We have rights. We have a treaty. That's our  
15 future. We can't just play around with our future, what we  
16 have, because our grandfathers fight for that. And today  
17 here we talk about, remember our chiefs, our people, the  
18 bands we call. You know, a lot of time I may not -- I been  
19 to Washington, I know how they are going.

20 But we are going to make a motion here but before  
21 I want to listen to all, so the superintendent of Rosebud, I  
22 wanted to hear you, how you stand here on this one here then.

23 (Speaking in Lakota.)

24 He had education, but when you come to treaty  
25 rights, that's where the elder people come in. That's when

1 you need them. So I want you to come up and say how you stand  
2 today on this issue here. I think that's the last chairman  
3 that we have. We have one superintendent here from Lower  
4 Brule.

5 MR. WILLIAM KINDLE: Thank you, Oliver. I  
6 appreciate all the comments from everyone that has had the  
7 mike here this morning. For those of you that are not real  
8 familiar with our governments, the way we function today,  
9 there's always been, I guess, some dispute and some  
10 disagreement between our treaty people and some of the IRA  
11 governments.

12 When I came into office I came in as an IRA  
13 chairman, but knowing the problems that happen with IRA  
14 governments and our treaty people, what I done when I took  
15 office down in Rosebud is I used -- and I asked our treaty  
16 people if they would be advisers to me, and it's worked out  
17 very well to me. I think Freemont can attest to that. We've  
18 worked really close together, and anything we tried to do or  
19 attempted to do through an IRA chairman, we always attempted  
20 to do with the support and help from the treaty people.

21 We have a real strong treaty group here at  
22 Rosebud, and to be frank with you, they do a lot of the  
23 things that I should be doing as chairman, but don't have  
24 time to do. There's not enough hours in the day for me to  
25 do everything that needs to be done, so I rely on our treaty

1 people, and I rely a lot on Freemont, who is the coordinator  
2 of that group.

3 But Mr. Red Cloud wanted to hear a statement  
4 from me, statement from me as Tribal chairman. I appreciate  
5 that. We need to make our feelings known about anything  
6 that's going to affect us as a tribe. And out of respect to  
7 our elderly advisory group and our treaty people, I have to  
8 tell you at this time that we oppose what's happening here  
9 today. And I as an IRA chairman oppose that out of respect to  
10 our treaty people and to our Oglala friends, the Grey Eagle  
11 Society.

12 So with that I will turn this over to someone  
13 else, anyone else that needs to get up here to say a few  
14 words. But I hope that I'm clear, Oliver, and to your group  
15 as to where I stand, and thank you for asking me to come up  
16 and say some more words. Thank you very much.

17 MS. ELAINE QUIVER: I would like to -- yesterday  
18 when Wilber asked me and Clair to talk about things, I didn't  
19 think I was going to come back up here. But I would like to  
20 read Volume 8A, Page 6. On June 18th of 1998 Clair met with  
21 Wilber Between Lodge, vice chairman; Teresa Two Bulls, Fifth  
22 Member's Office, and also in attendance were Elaine Quiver,  
23 Grey Eagle Society; Oliver Red Cloud, Treaty Council; and  
24 Bernadine Tall Man from the Bombing Range.

25 The purpose of this meeting was to discuss how

1 to continue consultation with the tribe. As a fifth member's  
2 office was unresponsive -- Mr. Underbaggage passed away -- at  
3 that time the Tribal council had passed a resolution in 1998  
4 against the project.

5 Clair expressed the importance that EIS process  
6 for Tribal input and said that participation in past process  
7 did not indicate support of the project. The various  
8 documents MOA, PA, ID plan were discussed. Cultural resource  
9 preservation and noise pollution were discussed as major areas  
10 of concern. Clair pointed to participation in the development  
11 of the aforementioned document is important to the tribe.  
12 Economic development, job opportunities were also brought up.  
13 Clair pressed a resolution as to how the tribe should be  
14 consulted and Wilber said he would take the issue up with  
15 executive committee.

16 With this, what we did thereafter is we have  
17 sacred hoop runners that run every year in the month of June.  
18 We took the children out to Hay Canyon, and the related areas  
19 in the Black Hills, and we did a videotape with the children,  
20 our elders explaining why we need to protect our land, our  
21 plants and our sacred sites and our artifacts that are  
22 scattered within and around the Black Hills. And this was  
23 videotaped and the children prayed. We prayed and went on,  
24 and in fact we run every year for the last 20 years.

25 So this tape is available, and it doesn't say --

1 or it doesn't describe exactly where these things are, but the  
2 tape will be awarded a global award this coming fall, and I  
3 think this is something that we achieved, as with the  
4 children, working with children, teaching them that while  
5 this is sacred, it's sacred to them, too. I wasn't going to  
6 say this because the award hasn't been made yet, but with --  
7 and since 1998 we started it, we got this done, and I think  
8 this is very important, not only to you but to the children  
9 that are going to grow up in the next generation and the  
10 future generations.

11 So the tape is available. It will be available  
12 for all of you to view it, and I'm very proud to have known  
13 all the children that work with us throughout the 20 years,  
14 and they are listening. Some have grown up and have their  
15 own children. Still they come back to do the sacred hoop run  
16 with us. And I think this is commendable of the children that  
17 grew up within the 20 years.

18 And today I would like to stand up here and  
19 talk about this because my nephew Mike said it isn't his  
20 place, because we already done in Pine Ridge that we did  
21 object and went against it and it's written. It's in the  
22 volume here. And the Grey Eagle Society comments are on  
23 page four, and that's why we worked so hard with them. We're  
24 trying to do all this, and there's humongous resource  
25 descriptions, cultural sites.

1 And Ben Rhodd is here. I'm so glad you're here  
2 because this is something that we all worked on together, and  
3 it's an experience that would stay with me forever. And I  
4 wish that some of you would be out there and walk. It's  
5 really nice to be out there learning that people that have  
6 lived there before and left the artifacts and articles and the  
7 sites that are there, I think it's important to all of us,  
8 because now we are -- we have the same language, we understand  
9 each other. We share the culture, the effects it will have on  
10 us. And I think this is something that's really important to  
11 us.

12 Some of the elders that were here at that time,  
13 and they were there at the time, I think Dan and I are going  
14 to miss them, because they took their expertise with them.  
15 And I think this is something that we should do now. We have  
16 a lot of elderly that could reminisce back into history and  
17 focus on the things that are important to them at that time,  
18 some day will be important to the future generations, and  
19 this is something that I always say.

20 And I know that Mr. Ben Rhodd was there and he  
21 spent more time, days there, and he said there is something  
22 out there. And he said -- he even said a whirlwind didn't  
23 chase me for nothing. You wouldn't believe a whirlwind would  
24 follow you all over the place, but it's true, that things  
25 like that do exist. So this is why I think we need to think

1 about it.

2 And again I'm going to ask, say we have to employ  
3 the STB to have patience because we have a long list of things  
4 to develop, and for the last three years, two and a half years  
5 is not enough for us to do a real clear description in that  
6 some of us, we can't reveal a lot of the things that are out  
7 there. But you can see it. You'll never know where it's at,  
8 I guess.

9 So with that I would like to say thank you, and  
10 I always think I have become Oglala, and my nephew William  
11 Kindle just reminded me that I'm Rosebud. I was born here  
12 and stayed here fourteen years and left and never came back.  
13 So I guess I am a Rosebud and an Oglala. Thank you very much.

14 MS. MARY JANE TIOKASIN: I'm Mary Jane from  
15 Standing Rock. Geez, I lived up here all my life I think.  
16 When we come to meetings like this we met our elder leaders  
17 like Harry Swift Horse, Mr. Tusk, Douglas Skye, if those guys  
18 were alive today this DM&E would not go through because they  
19 had the influence in Washington, D.C.. They were always up  
20 there.

21 They got us that big training school, the college  
22 up at Bismarck. They got our Indian college for us. They got  
23 our new buildings. They got our new school, great big grand  
24 school we have at Standing Rock. They did a lot of things  
25 because they were always in Washington. They never let the

1 government get the jump on them.

2 And if you people -- I think some of you know  
3 them, the older people that are here, because when you have  
4 leaders like that you're going to follow them and do what they  
5 tell you to do. One thing he always did tell us was A.J. and  
6 Senator Burdick, he was a great Indian warrior, and he said  
7 every reservation should have their own arts and crafts  
8 culture center. He said that's in the Constitution of the  
9 United States. But a lot of them don't.

10 I went to Pine Ridge one time and pert near every  
11 place there had an arts and crafts place, and I was glad to  
12 see that. But today Dean Bear Ribs, the councilman for Bear  
13 Soldier out of Standing Rock Reservation, a counsel woman got  
14 very sick so he had to take her home, but this is his  
15 statement that he told me to read, and Dean is my grandson, so  
16 you can tell where he gets his mouth piece from, I guess.

17 I, Dean Bear Ribs, councilman representative of  
18 the Bear Soldier District of Standing Rock Indian Reservation,  
19 I oppose construction of a new railroad by DM&E and I reserve  
20 the right to further comment pursuant to the Article II,  
21 Section 6 of the Fort Laramie Treaty of 1868. The Tribes will  
22 not object to work of utility or necessity, and that in unison  
23 with the elders of the Oceti Sakowin, we deem the DM&E project  
24 of little necessity. Many sacred sites will be in jeopardy of  
25 destruction. These sites will suffer irreparable harm from

1 construction of this railroad. Again, as a member of the  
2 Standing Rock Tribal Council I oppose DM&E's proposed  
3 construction. Dean Bear Ribs.

4 Now I would like to have a copy of this, and you  
5 know, this man was raised by his grandmother, and in turn  
6 when he finished his college and got a college degree to be  
7 a teacher, he took care of his grandmother until she died,  
8 and he knows a lot about taking care of elders when they  
9 need, and he's a very kind man, and we have another man that  
10 really knows a lot, and you all know him as Tim Mentz. And  
11 another one is Bronco Lebeau out of Cheyenne River.

12 And we as the Oceti Sakowin have been helping  
13 as much as we can. We get phone calls in helping these  
14 reservations. We went to Yankton for white salon area where  
15 the Corps of Engineers, and you know they promised, but I  
16 feel sorry for them because they are not honest. And we had  
17 them at Standing Rock, I think about fourteen times this year,  
18 every place we met with them, but we could get no answers.

19 But I'm hoping from this, these meetings, we can  
20 get answers from you. And the Federal agencies need to be  
21 doing their job for the people, just like the people we elect  
22 on our reservations have to do their jobs for our people.  
23 And I've met a lot of the people from the different  
24 reservations, their chairman, some of their councilmen and,  
25 you know, they are doing a good job, a great job for their

1 people.

2 And Standing Rock is not an IRA reservation  
3 nation. We did not accept the Act of 1934 and we never took  
4 the Sioux benefit. We took the education act. We took the  
5 higher education, so we have many lawyers and doctors and  
6 nurses. We have some right up in Bismarck, M.D.'s and  
7 lawyers all over, nurses, and I'm sure Cheyenne River and all  
8 the other reservations, Lower Brule, Rosebud has a beautiful  
9 hospital, and I'm sure they had to have their leaders go to  
10 get that hospital built. And Pine Ridge really has a  
11 fantastic hospital. I visited their hospital, too. I make it  
12 my business to visit these sites, talk to people, talk to  
13 their representatives and see what static they got from the  
14 United States Government.

15 But you know why destruct the land that we're  
16 living on? I said they put us on reservations because they  
17 wanted to get rid of us, but on these lands they found the  
18 most richest countries that they make the atom bomb with, the  
19 coal, the water. These are the bad lands that they gave us,  
20 but they turned out to be the best.

21 And I always say that to my grandchildren. I  
22 tell them, my grandma was six years old when she was -- when  
23 they had that Custer battle, and she said all the that was  
24 when the Indians Native Americans united to fight Custer,  
25 because he was so intent on destroying all Native Americans.

1 But you know we're fighters, Native Americans,  
2 and we can get things done if we put our heads together and  
3 not mock each other. You know, mockery, make fun of each  
4 other, that's not in the books. That's not in the building of  
5 the Native Americans.

6 And I'm hoping that we will all unite, and not  
7 only did the DM&E, but we got the Slade Gordon coming up on  
8 our tail here. And so we have to stick together. He's going  
9 to do away with all the Indian blood quantum. He said by the  
10 time I get through, he said, there will be thousands of  
11 unenrolled Indians.

12 Now that is not a nice thing to say. But  
13 talking about the blood quantum, we've been working on that.  
14 We've been working on the Grasslands in Wyoming. We've been  
15 doing a lot of things, and talking to other reservations so  
16 these things can get done.

17 We went to Bismarck, this is a good example, to  
18 fight for the land that is ours. What we want to put the  
19 lease on because they are using it. We weren't in it to put  
20 the ranchers out of business. We were there to collect the  
21 money, to keep our land improved with fire guards, dams, stock  
22 water dams.

23 But there's a guy named Ted Turner coming in,  
24 buying up all -- every place in the Dakotas, and he's putting  
25 in buffalo. Those buffalos are supposed to be roaming free,

1 but now they are all penned up by McLaughlin. There are two  
2 thousand of them. If you see that, how skinny those buffalo  
3 are, when they are supposed to be big and fat, when they used  
4 to run the ranges as free animals.

5 And we don't want that to happen to the animals.  
6 That will happen if the DM&E goes through. You have to live  
7 the life out on the prairie and on the ranch like the Indians  
8 do, and now -- and you'll feel sorry when you see all these  
9 things going up and little space for the animals.

10 But I really am proud of all of you people here  
11 today, Native Americans and you little guys sitting up there  
12 at the table, but you have no -- if we can work together,  
13 like in Rapid City, those ranchers out there, when the Native  
14 Americans gave their testimony they all came over and shook  
15 hands with us and they said they were glad for our testimony,  
16 and I think it's about time that we turned around and pulled  
17 for the Native Americans. They didn't expect that, I guess.  
18 So I'm glad you're all here today and thank you for listening  
19 to me.

20 MR. TERRY GRAY: I've been informed by our casino  
21 staff who said that the food is out and if it gets cold,  
22 it's our fault. They ain't going to reheat it. So as

23 moderator I would like to call on one of our recognized --

24 MR. OLIVER RED CLOUD: Wait. Give me the mike.  
25 We like to eat, but this is really important. Before we go

1 eat, I know most of you are going to go after you eat. You're  
2 going to leave, so I'm going to make a motion. I'm going to  
3 leave, too, right after dinner. While I'm here I'm going to  
4 hear from the people, how do they feel about this railroad?

5 And I want to know because we talk about we  
6 oppose it. We talk about how all the treaties, whatever, all  
7 these. So I'm going to make a motion, as a Black Hills Sioux  
8 Nation Chairman, and the people, on behalf of the Lakota  
9 people in eight reservations, we oppose the railroad. We  
10 don't want it. Under 71 and Article I to that, we got to go  
11 to Court. (Speaking in Lakota.)

12 And so we appear in Court, not the state court,  
13 that's where we belong because Article I is Nation to Nation  
14 of the United States Constitution. So now you hear, all the  
15 people here talking about, I don't know how you're thinking,  
16 so I made a motion, no railroad track. That's my motion on  
17 behalf of eight reservations. So whoever is going to second  
18 me, we will vote on it and you can go, or whatever, because  
19 I'm going, so that's what --

20 MR. REGINALD CEDAR FACE: I'll second that.

21 MR. OLIVER RED CLOUD: (Speaking in Lakota.)

22 You want to do that or -- when you work on  
23 something, they don't give up, but we give a meeting like  
24 that, we talk about it and go home and forget about it.

25 Wicata moving all the time, they don't give up.

1 When they are after something big money, they don't quit.  
2 The way Lakota people, we talk about it. We know it all, but  
3 that's when we stop and forget about it. This is really  
4 important because once they open that 51, that's where this  
5 is going to involve in there. You can see if you're a treaty  
6 man, they use that 51 many ways. But we stop it, and this one  
7 here come through, good-bye.

8 They could do it, and they are going to do it  
9 again, so might as well forget about it. We go to Washington  
10 to Supreme Court or wherever. We sit back here and set  
11 through the paper all the time, and we read it and we fight.  
12 Back in the chief days, our chief, they don't do that, no.

13 No good. Generation come first, that's our land. That's  
14 future. Who are you? What money are you going to give us?

15 Look at that Black Hills, you never give it to  
16 us yet, and that's not worth that much, not even that much  
17 they offer, it's worthless, because it was ours first. So  
18 that's a motion and I got a second, and I'm going to see how  
19 you feel. Think about your (Speaking Lakota.) Think about  
20 your rights. Money is good.

21 UNIDENTIFIED SPEAKER: Mr. Red Cloud I believe I  
22 want to second it, because I think both of you are officers  
23 of the Black Hills Sioux Nation Council, and I think Crow  
24 Creek would like to second the motion, and I think we should  
25 have a vote of hands here, whoever is interested in the

1 treaties, because that's very important, what we do here,  
2 because it would show that we are still fighting for our  
3 treaties. I believe it could be negotiated, but right now at  
4 this moment, I think everybody has in their mind the treaties  
5 are being broken again.

6 So I will second that, Crow Creek, and we would  
7 like to have a show of hands, all those people who are -- or  
8 stand up. Stand up if you are --

9 MR. OLIVER RED CLOUD: (Speaking in Lakota).

10 Count them; that's why we're here for the last  
11 two days, count them, Elaine.

12 MS. ELAINE QUIVER: I count 34.

13 MR. OLIVER RED CLOUD: Now we got 34. That's how  
14 much people here, and now my friends, you see how they voted,  
15 so why don't you go back to Washington. You tell them they  
16 want to come through, you have to come through eight  
17 reservations, because all these other councils are behind us,  
18 and Tribal councils are behind us. That's Article XII, all  
19 people wants no railroad. That's it. So we can go to Supreme  
20 Court, or go to the Nation to Nation, whatever, because human  
21 rights, they got laws.

22 So now you know, so that's where we're at. Thank  
23 you very much. And I'm not trying to be against you but  
24 that's where Lakota people are mind so you know. Thank you.

25 MR. TERRY GRAY: Get us back on the agenda. I

1 would like to call upon one of our recognized spiritual  
2 leaders to offer a meal prayer and everybody break for lunch.  
3 Mr. Swift Hawk.

4 (Prayer in Lakota offered by Mr. Swift Hawk.)

5 (A recess was taken at this time.)

6 MR. TERRY GRAY: I guess we're going to reconvene  
7 comments, but before we do, the president of the DM&E is  
8 going to be addressing or answering some questions and  
9 comments. But prior to -- right before lunch break, because  
10 the MOA, the PA and ID plan, it reflects the Black Hills  
11 Sioux Nation Treaty Council, and they officially went on  
12 record to oppose the project, which this is what this process  
13 is, and it's okay, because they were targeted to be a  
14 signatory to the agreement, which is okay. That's what this  
15 NEPA process is for.

16 But nevertheless, that does not mean that  
17 because the absences of the other federally-recognized  
18 Tribes, the NEPA process must go on, therefore we're going  
19 to continue comments after the CEO of DM&E addresses you.  
20 But here's Clair Green.

21 MS. CLAIR GREEN: At this time I would like to  
22 introduce Kevin Schieffer, who is CEO of DM&E Railroad. He  
23 had lunch with us. Some of you spoke with him at lunch. I  
24 would just like to say that in my experience on working on  
25 projects like this, you normally don't have an Applicant who

1 has the interest or involvement that Mr. Schieffer has had in  
2 helping us. And I'm very grateful for that because he has  
3 been very supportive of all these meetings. And so now,  
4 anyway, I would like to introduce Mr. Schieffer and have him  
5 take a mike to say a few words.

6 MR. KEVIN SCHIEFFER: Well, hello. My name is  
7 Kevin Schieffer. I am the president of the DM&E Railroad, and  
8 I'm here today and pleased with the opportunity to answer  
9 questions or share with you our development philosophy on this  
10 project. It involves a lot of issues that are important to  
11 the people here and to people throughout Indian country, and  
12 we're trying to understand those.

13 We don't pretend to be an expert. We don't  
14 pretend to even know what all the issues are, much less what  
15 all the answers are to them. But I want folks to understand  
16 that we are interested in working with you to try to find not  
17 only answers to problems, but ways to create opportunities.

18 And as chairman Jandreau was talking earlier, I  
19 was listening closely to his admonition to try to make an  
20 opportunity out of a project like this, and I think there are  
21 some opportunities, and I see that as a challenge in this  
22 project, to build it the right way. And part of that is to  
23 create opportunities where we can.

24 I come here today, I've been to Rosebud many  
25 times. I've been to all nine reservations in this state quite

1 a few times. I used to be the U.S. Attorney for South Dakota,  
2 and I think in that period of time developed a good working  
3 relationship in Indian country, spent a lot of time in Indian  
4 country and probably the most important thing I learned is how  
5 little I know about the process, about the culture, how much  
6 there is to learn.

7 And one of the frustrations, very frankly, I've  
8 had in this project is going through that process again from  
9 a private sector development effort, trying to figure out the  
10 best way to communicate. We frankly haven't succeeded in  
11 doing that, and I would like to try to figure out a way to do  
12 that better than we have.

13 Maybe there's an answer to it, maybe there's  
14 not, but our goal is to work with anyone who is interested in  
15 working with us, but also to respect differences and  
16 disagreements, and if there's not a common ground there, we  
17 don't want to intrude or try to force ourselves on to anybody  
18 or any process.

19 Sometimes there's just differences of opinion  
20 and we can't -- you can't change that. You can't change some  
21 of the history. I can't change some of the very legitimate  
22 issues that are involved here, historic issues that are  
23 involved here. But we can try to operate as honestly and as  
24 sincerely as we can in the environment that we have to work  
25 in. And I would like to talk about that a little bit, I

1 guess.

2 But fundamentally our objective is to try to  
3 turn this into an opportunity where we can turn it into an  
4 opportunity, and I would like to talk about those sorts of  
5 issues, and to get some input and some ideas, and also to  
6 address the areas of concern and what we can do to fix the  
7 real problems, and what we can do to address the perceived  
8 problems that are associated with this project.

9 I think following up on something Scott said, and  
10 Jim also from the Bureau of Reclamation earlier was talking  
11 about process and these thirteen volumes of the Draft EIS  
12 statement, and how frustrating that is. And I've heard  
13 comments about how people don't have all of the information,  
14 or there's more information and they are learning of it. I  
15 think that was one of Scott's frustrations.

16 And I guess I would share something with you,  
17 it's one of our frustrations, too, and I'm sure it's one of  
18 the frustrations of everybody from the Federal government  
19 that's working on this project, too. We are all working in a  
20 process that is mandated by law, and it is, I think, for a  
21 lot of the reasons Jim was talking about. We're in a very  
22 litigious society, a very legally-oriented society, and you  
23 have to disclose this and report that and document this, and  
24 it just builds up into a huge pile of information.

25 And I don't sense that anybody is trying to hide

1 information, there's just so much of it though, it's hard for  
2 any one person to understand the whole process, much less try  
3 to distribute all that information. We -- I've read through  
4 at least all of the EIS. I haven't read through all of the  
5 Corps of Engineers papers as of yet, although I guess we  
6 generated most of them, or some engineer or something  
7 generated them.

8 But there is a lot of information out there. I  
9 think it is open and available, but it's hard to get your  
10 hands around this process, and it's a frustrating process.  
11 And I just emphasize to you it's frustrating for us as well,  
12 but it's the process that is required by law and mandated by  
13 law, and the process that I think everybody in this room I  
14 think is required to follow at a minimum, and that's what  
15 we're trying to do. I do think there are ways, though, that  
16 we can work together outside of that formal process.

17 I don't think it's appropriate, nor am I  
18 suggesting that we should try to circumvent that process, but  
19 I do think there are things on a private company-to-government  
20 level that we can do, and again there I think that was an  
21 issue Mike was -- or actually Scott was talking about in the  
22 EIS, commenting on a section where there was references to  
23 these agreements that we're working with with communities and  
24 others, but that the Tribes weren't -- or that the Indian  
25 country issues weren't mentioned in that section. That is

1 something we've tried to do, not very successfully I might  
2 add, through probably my own incompetence, or lack of  
3 understanding.

4 But I'm very, very much desirous. I would like  
5 to do that kind of thing, work out individual agreements, and  
6 we have done that in communities up and down our line where  
7 the railroad and the government, the local government enters  
8 into agreement. We operate through 55 communities, and we're  
9 trying to get authority to operate through a 56th community.  
10 But out of the 55 communities that we operate in, we have  
11 agreements in 51 of them. We have agreements with counties,  
12 and we would also welcome agreements with individual Tribal  
13 organizations.

14 We have the Memorandum of Agreement and the  
15 Programmatic Agreement, that is mandated as part of this  
16 process. It's part of that 13 volume stack of paper. But  
17 that doesn't mean that we cannot also work on something on a  
18 process that isn't quite so mysterious, or that is tailored to  
19 your preferences or your issues that is outside of that  
20 universe.

21 That's not something that we're trying to force  
22 on anybody, but I do want you to understand that we are open  
23 to it, that we welcome it, and it would be in that kind of  
24 context that I think there are areas where we could go that  
25 would be more tailored to something that you directed or some

1 areas that you wanted to emphasize, and that may be different  
2 from tribe to tribe, from reservation to reservation.

3 In my discussions, and we've had a lot of them  
4 over the last two or three years in Indian country, some are  
5 interested in tourism development, some are not; some are  
6 interested in passenger service agreements, some are not; and  
7 you can tailor those agreements to whatever the individual  
8 issues that you want to address are.

9 I've heard concerns from some about hazardous  
10 waste. That's an issue that you could address specifically  
11 in there. A lot of these issues are addressed in those 13  
12 volumes, but that doesn't mean that you can't do more, or  
13 something in addition to that as a separate agreement, for  
14 those who want to do something like that.

15 And I would hope that we -- and I would  
16 encourage that process, and that takes sitting down at a  
17 table and having a dialogue, having a discussion and  
18 understanding each other's issues. I represent, obviously,  
19 the shareholders and the company in a private interest and  
20 need to keep those concerns in mind.

21 But I don't think that precludes us coming up  
22 with a win-win situation that actually creates jobs or  
23 creates economic development opportunities or creates tourism  
24 opportunities or passenger service opportunities or provides  
25 guarantees over and above what is in some of these federally

1 mandated documents, private commitment guarantees that are  
2 enforceable as it relates to any issue that is of concern to  
3 you.

4 And if we can do it, we will do it, and we will  
5 put it in the agreement and make it enforceable. If we can't,  
6 we will tell you why we can't do it and explain it. And  
7 that's the way we've worked in all of these other agreements  
8 that we've done. That's what I would like to do here.

9 But again, it's not a process that we're trying  
10 to force on anybody. I know this is a controversial project,  
11 and there are people who simply are opposed to it, and I  
12 respect that. We obviously have an Application pending and  
13 it's something that we're committed to trying to develop. But  
14 we are trying to develop it the right way, the responsible  
15 way. And that boils down to trying to create opportunities  
16 where we can create opportunities, and trying to solve  
17 problems wherever we can solve problems and be accountable for  
18 the things that we can't do.

19 Some of the issues that I've heard raised, and  
20 I'll just touch on briefly, first in the area of cultural  
21 resources, that is an issue that is addressed in the  
22 Programmatic Agreement. It is also something that I've gotten  
23 a much better personal awareness of in the last two years,  
24 travelling along our line, seeing some of the sites, working  
25 with some of the treaty folks.

1 One of the really neat events in this whole  
2 development process that sticks with me are some of those  
3 trips that we took to various burial sites and cultural  
4 resource sites up and down the line, our existing line. In  
5 addition to the route that we're trying to build, and there  
6 are real issues there and they need to be dealt with, but  
7 we're certainly not an expert in how to deal with them. We  
8 look to you for guidance.

9 If there's something we should be doing over and  
10 above what's required by law, we're certainly willing to look  
11 at doing that, and if there's a way we can do it, we will.  
12 But that's something that we need to sit down and have a  
13 conversation on, and that's not a conversation we're trying to  
14 force on anybody. But I want to make it clear that the  
15 opportunity is there for folks who want to meet.

16 Also then in the area of economic development or  
17 opportunities, I think the jobs issue, that's something that  
18 is addressed in a general way in the Memorandum of Agreement  
19 that is part of this process. I think there's a lot more that  
20 can be done on a one-on-one discussion in terms of specific  
21 job commitments and commitments for job opportunities anyway  
22 for training for things like that. And it could be developed  
23 in a way that is a win-win situation.

24 This project involves thousands of construction  
25 jobs and thousands of permanent jobs after the railroad is

1 built and there are I think a lot of great opportunities to  
2 focus on jobs in Indian country and develop a training  
3 program, develop a working relationship there that has some  
4 permanency to it.

5 I think there are also a lot of areas in tourism  
6 development. Again, this is something that I've heard from  
7 folks that we've talked to in Indian country over the last few  
8 years. Some like the idea, some don't, and it's very much up  
9 to the individual tribe or organization that we're working  
10 with. But I think there's a lot of opportunities to develop  
11 exchange programs.

12 Part of this project involves a passenger  
13 service, some of which goes very close to Indian country.  
14 We've talked to some about the potential for special  
15 excursion trips, cultural exchange kind of development,  
16 hunting, things of that nature, and there are opportunities  
17 there. Some are interested in them, some aren't.

18 And it's, from our standpoint, something we're  
19 happy to talk about, but only if there's an interest on your  
20 part. The same thing with passenger service, ongoing  
21 passenger service; there's been interest expressed in that by  
22 some, and that's another area that I think there's some  
23 opportunities. That's sort of an example of the kind of  
24 things that we're interested in working on.

25 I do think also that a couple of things I heard

1 specifically this morning, and I got here earlier this  
2 morning and was able to sit through most of it. I took a lot  
3 of notes and got some ideas. But some specific things I  
4 thought worth addressing, there was a comment about a Tribal  
5 liaison, and I certainly like that idea.

6 I don't think it serves a lot of purpose if it's  
7 just something that's mandated, but I think as a part of a  
8 private agreement, I would like to go beyond that and get  
9 some active representation with a Tribal affairs officer in  
10 terms of how we can better improve communication, not just to  
11 do liaison type work but to help us understand better some of  
12 the cultural issues, some of the communication issues that we  
13 have not been able to figure out or work through on our  
14 own.

15 And I recognize we haven't been able to do that  
16 in all instances in this case, and we're looking for ways to  
17 do that. So I think there are areas that we can even expand  
18 on that concept. There was another issue I think raised about  
19 expanding the hazardous material training section in the draft  
20 EIS.

21 I guess one of the concerns I have about the  
22 draft EIS and we'll probably address that is I think the  
23 discussion of that issue I've heard a lot about. There is  
24 an assumption out there that we're going to be hauling waste  
25 or hazardous waste or something on this railroad. I've heard

1 that many times over, and I think this reference to training,  
2 requiring training for something like that might be a little  
3 premature.

4 I don't know for sure where that came from or  
5 why it's there. I don't think there's any hazardous waste  
6 that's part of this project. But if, in fact, there is, I  
7 think it would make sense to expand that kind of training, if  
8 it needs to happen. But I would suggest that it's based on --  
9 it should be based on a need. If we're not going to be moving  
10 significant product like that, it probably doesn't make sense  
11 and is getting a lot of people worked up or concerned. It  
12 further creates concern, I guess the impression of impending  
13 disaster where there is none.

14 But in any event, that's another area that needs  
15 to be addressed and we can probably do something there.  
16 Those are just some of the examples. I took a lot more than  
17 that from this morning's meeting, but it gives you a flavor, I  
18 hope, of where we're coming from on this, which is we're  
19 looking -- we're here looking for direction. We're here  
20 looking for ways to develop the project responsibly for those  
21 that want to help us do that.

22 But we also respect those who simply do not want  
23 the project developed. We will respectfully disagree, and  
24 try to move forward. This is not something that is in our  
25 control. If there's not a public need for it, the project

1 shouldn't be built. If it's not in the overall public  
2 interest, it shouldn't be built. But we think very strongly  
3 that it is, but we also recognize that there are problems  
4 that need to be addressed, and the door is open to try to do  
5 that.

6 We are not here to lobby anyone. We are here  
7 to extend an invitation to work with you, though. I think  
8 there are some opportunities. I don't create any false  
9 expectations. I think we have to be realistic as to what  
10 those opportunities are, but there clearly are opportunities  
11 out there, and we're going to be working very hard to develop  
12 them, and we look forward to working with anybody that wants  
13 to do that. And we also will respect your differences of  
14 opinion where you can't come to an agreement.

15 So that's pretty much it. I would be happy to  
16 answer questions, if that's appropriate, or meet individually  
17 with folks. I've had a few meetings this morning. I see a  
18 hand there, is it appropriate? I don't know who's --

19 MR. TERRY GRAY: Who had their hand up? Okay,  
20 Freemont.

21 MR. FREEMONT FALLIS: Kevin, why weren't Bureau  
22 of Indian Affairs.

23 MR. TERRY GRAY: Can we start the mike? Our  
24 court reporter needs your comments.

25 MR. FREEMONT FALLIS: Freemont Fallis, Rosebud

1 Sioux Tribal Treaty Council. Why weren't Bureau of Indian  
2 Affairs involved in this process?

3 MR. KEVIN SCHEFFER: I believe, and I'll defer  
4 this to the Federal agencies that are here, but under -- from  
5 a railroad standpoint the issue I think is driven primarily by  
6 -- or I should say from a legal standpoint the issue of  
7 involvement of the EIS is driven by those agencies that have  
8 to issue a permit or authority to construct or operate the  
9 railroad, or that's required for construction or operation of  
10 the railroad.

11 If we were going through what is legally defined  
12 as Indian country, I think the BIA would have to be involved.  
13 I know we're going through challenged -- or we're clearly  
14 going through treaty lands, and I know that is a very  
15 sensitive issue, and I would be happy to address that, but  
16 that's not something that involves the BIA jurisdiction in  
17 terms of a permit process or something that's triggered here.

18 So my understanding of it is -- basically the  
19 answer to your question is only those agencies who have to  
20 issue a permit to develop the project in one form or another  
21 are involved as agencies in the draft, or in the EIS process.  
22 Am I saying that correctly?

23 David, you probably have more expertise than I.

24 MR. FREEMONT FALLIS: Because further down the  
25 road, if we have to get into the legal process, the BIA is

1 our trust responsibility, so therefore we rely on the Bureau  
2 of Indian Affairs if we have to be into a legal process, and  
3 that is my main concern. I really appreciate Mr. Her Many  
4 Horses from Lower Brule superintendent being here in  
5 attendance. At least he has taken the time to look after his  
6 people from the Lower Brule Indian Reservation, and I thank  
7 him very much today.

8 MR. CLEVE HER MANY HORSES: Cleve Her Many  
9 Horses, Lower Brule Agency. Yes, Freemont, I guess to help  
10 answer your question, a couple weeks ago we had a National  
11 Alliance officers meeting in Minneapolis and of course the  
12 Great Plains Region people were there, and all the central  
13 office directors and assistant secretary was there.

14 While I was there, I talked to some of the  
15 central office directors about this project. This proposed  
16 project, and like a month before that the City of Pierre  
17 approached Lower Brule, and I'm sure I wasn't here for the  
18 chairman's comments, but I'm sure he mentioned, and some of  
19 the councilmen yesterday also mentioned that the City of  
20 Pierre is going to propose a bypass through Tribal fee land  
21 south of Ft. Pierre.

22 So I talked to the central office directors,  
23 regional office and some of the superintendents about, you  
24 know, what is our trust responsibility on this project. And  
25 so I think the gears are in motion now, and I think the

1 cooperating agencies and the Surface Transportation Board will  
2 be hearing more from -- on our view, I guess, on how it's  
3 going to affect Tribal trust lands.

4 The proposed bypass for the City of Pierre,  
5 although it's outside the original boundaries, Lower Brule  
6 Sioux Tribe does have Tribal trust lands outside the  
7 boundaries in that area, so it's going to greatly affect it.  
8 Right now we're playing the catch-up game reading everything  
9 we can and talking to as many people as we can. That's my  
10 whole purpose here is to learn more about this and take it  
11 from there. Thank you.

12 MR. OLIVER RED CLOUD: I was going to go, but my  
13 tribe told me to stay. We are going to go about three. Good  
14 thing I did. Okay, now who are you working for, the tribe,  
15 Bureau of Indian or who.

16 MR. KEVIN SCHEFFER: I work for the DM&E  
17 Railroad. I am president of the DM&E Railroad.

18 MR. OLIVER RED CLOUD: Okay, let's take it back  
19 to our treaty rights, 1973, when we made that treaty,  
20 naturally our superintendent and secretary to our  
21 superintendent today, I have that problem here, the last few  
22 months our tribe now has a lot of laws, treaty laws and  
23 traveled. Our tribe plays with our money, Federal money, and  
24 I went through a lot of heartache through that, and I'm really  
25 sorry our Tribal council, what they did. I really feel sorry

1 for them.

2           Okay, you work under the tribe, Indian Bureau,  
3 who give you consent -- or who said you could work with them  
4 people? Like we say on this deal here, you have to go to  
5 Secretary Tierney, and through that the treaty rights, that's  
6 where it's at. So why you tell us what to do, because like I  
7 say this morning, we have a treaty and consent of the people  
8 here responding what we did. So it's pretty hard for the  
9 people to understand what we're doing. But now I think they  
10 understand what is going on. They hear your comments and try  
11 to tell us your involvement. So they have to, really have to  
12 do some more research on this laws, or whatever, these people  
13 here.

14           MR. KEVIN SCHIEFFER: I thank you for that. I  
15 would just emphasize, I'm not hear trying to tell anybody what  
16 to do. We'll follow the law, however the process is laid  
17 out. We're trying to do it the right way. I am very  
18 sensitive to and familiar with frankly a very tragic history  
19 as it relates to treaty issues and the violations and  
20 abrogations of those treaties over the years. That's  
21 obviously not something that we're involved in.

22           It's not a very proud part of the history of  
23 this country, but that's not an issue we, as a private  
24 company, can deal with. That's a government-to-government  
25 issue, and in all my government service, I think I have a

1 long record of having a lot of respect for Tribal sovereignty  
2 and treaty rights in government service. But as a private  
3 company, and representative of a private company, that's not  
4 something we obviously can take a role in. We are trying to  
5 follow the rules that are laid out by Federal law, and  
6 whatever they are, we will comply.

7           MR. OLIVER RED CLOUD: The reason why I ask is  
8 government-to-government and human rights, it says in there no  
9 United States Constitution tell me my rights, not that rights  
10 or human rights on this site or civil rights on this site, but  
11 on civil rights. I have human rights. I have my rights  
12 because human rights was here and you come and, you know, it's  
13 government-to-government, I really want to believe that.

14           MR. TERRY GRAY: Mr. Schieffer, I would like to  
15 address a question as a cultural resource personnel of  
16 Rosebud, under Chapter 7, I don't remember what volume this  
17 is, IV, Page 7 -- 19 number 44 it says, The Applicant shall  
18 obtain special use permit from the U.S. Forest Service  
19 granting an easement for the rail line across the lands  
20 administrated by the U.S. Forest Service.

21           Now I'm familiar with archeological reports and  
22 to truly address issues within the true intent of historic  
23 preservation, what do you say about granting the tribe the  
24 same easement that you're getting in regards to those Federal  
25 lands, because those sites, those paleontological resources,

1 though sites, the Tribes legally did not give those up, you  
2 know, and with that in mind, in regards to the easements and  
3 in the Federal areas, it would be more than willingly  
4 accommodate the treaty process through the NEPA process if you  
5 allowed that. What do you think about that?

6           MR. KEVIN SCHIEFFER: Well, I can give you my  
7 personal opinion on that, but I would defer to the Forest  
8 Service representative who is here. But my personal  
9 understanding is, first of all, if we have an easement on  
10 Forest Service land, it's for the very limited purpose of  
11 operating a railroad, and we would have no rights with respect  
12 to the cultural or archeological resources there, other than  
13 we would have to comply with whatever conditions the Forest  
14 Service put on the easement.

15           So we would have no rights to convey there. They  
16 would still be with the Federal government. Having said that,  
17 if whether this particular land or on land that we retained or  
18 land that we acquired in fee, whether it's government land  
19 through an exchange program or private land that we're buying  
20 outright or something, that will be an area where we would  
21 have a legal right to enter into an agreement with you with  
22 respect to archeological resources.

23           And that is an area we would be happy to explore  
24 with you on an individual basis and by -- to give you an  
25 example, I've had some discussions with some Tribal

1 representatives about the possibility of if there are  
2 archeological resources, maybe to work in a cooperative effort  
3 or contribute towards some type of cultural resources or  
4 something like that, that would be able to be directed by the  
5 Tribes and be used as a cultural education opportunity. Those  
6 kinds of things we could do, and we could work out a resource  
7 sharing kinds of things on land that we own or have an  
8 interest in.

9           But on the Forest Service lands, I don't think  
10 we would have legal ability do that; am I saying that right,  
11 Wendy?

12           MS. WENDY SCHMITZER: This issue was brought up  
13 yesterday, actually, and the concept is something that I  
14 really appreciate and will take back and discuss with the  
15 decision makers. Typically we don't grant joint easements  
16 because of the management implications and the ability of the  
17 competition that's involved.

18           But I think in this case the real issue here is  
19 actually making sure that you have access within the easement  
20 to those sites for information or those traditional plants  
21 that I find important. And I think it's a very important  
22 thing that you take this information back and discuss it in  
23 more detail with the people that make the decisions about the  
24 easements.

25           MR. TERRY GRAY: I guess what I'm trying to say

1 is it's more or less a preservation easement, because with  
2 that, in consideration with the Tribes -- let's say the Forest  
3 Service isn't adequately managing the historic sites that it  
4 has. Now if the Tribes have an easement, that is a little  
5 kick in the pants to say, Let's start protecting some cultural  
6 resources. Correct me if I'm wrong.

7 MS. WENDY SCHMITZER: You kind of put my on the  
8 spot. How can I answer that without getting into trouble.  
9 What I would tell you is I appreciate where you're trying to  
10 go with this. I do understand that, you know, we're talking  
11 about a lot of miles of track, and it's not possible for us to  
12 be there all of the time managing and monitoring all the miles  
13 of track. So, you know, I'm not going to say "trust us"  
14 because I know that's not possible.

15 But I will tell you that what the issue of  
16 making sure that your resources is protected is very important  
17 to us. And the laws that are there in place, that go along  
18 with granting an easement, are also there to protect your  
19 rights and your access. The conditions that we're going to  
20 put on this easement could very well include opportunities for  
21 you to cross into the easement areas and explore. And I think  
22 this is again something that we need to have further dialogue  
23 on and I look forward to doing that.

24 MR. KEVIN SCHIEFFER: I would just chime in there  
25 again from the railroad's perspective, I mentioned this a

1 little bit in my opening remarks, but both in the area where  
2 we're looking to expand to construct new rail line and on our  
3 existing line I think some of the more memorable parts of  
4 this project development that I will remember many decades  
5 from now is getting an appreciate first hand for the cultural  
6 resources that are there.

7 It is a real issue and it is something that is  
8 a real concern to us and we want to do it the right way.  
9 There are very serious safety issues involved in terms of  
10 access to the right-of-way, and so forth, but I think there  
11 can be things that can be worked out in terms of identifying,  
12 preserving and protecting those resources that we can do on  
13 the land that we own.

14 And we're willing to do that in a private kind of  
15 agreement; or to explore that, I should say, in a private kind  
16 of agreement. Because I don't know what all the issues  
17 involved there are. But I do know that we want to do  
18 something there that helps protect them, frankly better than  
19 is happening today with the erosion and everything else that's  
20 going on there.

21 So I think there's a lot that can be done there.  
22 I think actually cultural resources is one of the areas where  
23 there are some real opportunities to make some improvements as  
24 a result of this project, and there are a lot of sensitive  
25 issues that we have to work around to do that, and we don't

1 pretend to be an expert in that.

2 MR. TERRY GRAY: Okay.

3 MR. SHANNON BROWN: My name is Shannon Brown. I  
4 had a chance to work for a period of time on the project and  
5 there was concern -- well, to me it's a concern, south of  
6 Edgemont, the Department of Energy, nuclear waste disposal  
7 sites, and there is a road to get into that area and that  
8 water was very murky, and you could tell there was a lot of  
9 drainage in the area. And if workers have to gain access into  
10 that area, it might be affected somewhat by that nuclear waste  
11 that's through the drainage systems. I don't know if the  
12 draft EIS addresses that issue and --

13 MR. KEVIN SCHIEFFER: Yeah, let me take a crack  
14 at that. I think I know where you're talking. Just directly  
15 south of Edgemont, probably less than a mile, right around  
16 there, I'm trying to get -- there is a former site there that  
17 that was dismantled, I don't know, some years ago, and when  
18 we laid out the original route, frankly we were not aware of  
19 that and it did go right over it, or very near it, and that  
20 was one of the issues that came out of the earlier scoping  
21 and environmental review that was done on that line.

22 The line that we originally proposed has had a  
23 lot of changes made to it because of environmental concerns.  
24 That was one of the environmental concerns that raised some  
25 real issues, and we had to change the alignment in that area

1 to get away from that.

2 So that the Alternative B that is identified in  
3 the DEIS went right over or very near the site you're talking  
4 about. Alternative C moved away from it for that specific  
5 reason that you're raising. So that is an issue if  
6 Alternative B is a route that is used. But if Alternative C  
7 is chosen, then I think that's been avoided. That's my  
8 understanding of it, if we're talking about the same thing.

9 MR. SHANNON BROWN: I have another question. If  
10 the right-of-way is granted, we had a lot of discussions  
11 about plant studies to be done from a cultural perspective,  
12 because the plant study is being done from an environmental  
13 perspective. Now it needs to be done from a cultural  
14 perspective, and they said we don't want to do it because  
15 this may not be the right-of-way, the route that is granted  
16 to us. And so I ask, well, is there going to be a guaranteed  
17 time for those studies to be done adequately, so that the  
18 Tribes can be heard through the elders and the business  
19 people?

20 MR. KEVIN SCHIEFFER: That is an issue that  
21 certainly should be directed to and addressed in the EIS, in  
22 the formal EIS process. But speaking as a private company, we  
23 would certainly be interested and willing to talk with you to  
24 get an education in terms of how much time is needed, what  
25 areas you're talking about, and so forth, and try to

1 accommodate the schedule to fit that need, whether it's  
2 absolutely required by the law or not doesn't mean that we  
3 can't sit down and work something out, to work the  
4 construction schedule around it or whatnot.

5 Now if it has to be in a certain time of year, or  
6 if it's in a particularly sensitive location, I can't make any  
7 promises without knowing what the issues are, but I can tell  
8 you from a company standpoint my approach to it would be to  
9 sit down with anybody who wants to sit down at the table. And  
10 if you say, well, gee, can you work around this so that we can  
11 have somebody there, and your field inspection or analysis  
12 prior to disturbing the ground, or maybe even in the  
13 right-of-way after you've started operations, wherever we  
14 could work with you to do that, we certainly would.

15 But again, that's subject to what particular area  
16 it is, if we can work around it, what time of the year it  
17 needs to be, and all that kind of thing. There are practical  
18 realities that we have to live with, but we will go out of our  
19 way to try to make it work, whether it's required as part of  
20 the formal EIS process or not.

21 MS. CLAIR GREEN: Kevin, could I comment to  
22 that? As people have been asking questions I just wanted to  
23 remind everybody to think about this Memorandum of Agreement  
24 that Terry has been trying to discuss. That's a document that  
25 was created for the very reasons that Shannon asked that

1 question, to insure participation in a lot of these areas that  
2 we don't know yet whether they are going to be needed. We  
3 don't know what's going to be there because we don't know  
4 where the route might possibly be.

5 That MOA is not a document that's required by  
6 the NEPA process or any other process. It's a document put  
7 together by Tribal representatives to cover these types of  
8 issues, and that's -- I wanted to point that out, because we  
9 might want to focus also on that, in addition to the  
10 railroad's willingness to work individually with Tribes, there  
11 is that Memorandum of Agreement, which the railroad has  
12 offered to sign with any tribe that would like to sign it, and  
13 it makes a bunch of different statements about issues like  
14 plant studies, like job training, and I can't remember all the  
15 rest of them because I don't have it in front of me. Thank  
16 you.

17 MR. JAMES KANGAS: James Kangas, Bureau of  
18 Reclamation, Rapid City. I'll stand up. I have some  
19 experience with preservation covenants and preservation  
20 easements on our projects in South Dakota. And depending on  
21 the land status, it is a very interesting legal puzzle.

22 For example, one of the problems my agency is  
23 often encountered with is something called chasing water.  
24 Where does our responsibility end when we install a water line  
25 to serve a community? Does it end at the faucet of each

1 residence that subscribes to that water, or does it end where  
2 we pump the water to the rural water system and they  
3 distribute it.

4 Let me tell you a little story, and I'll make it  
5 brief. Recently we were -- I was involved in a project where  
6 water was piped to some private land where the men wanted to  
7 develop a subdivision. There were some stone circle sites --  
8 there are some stone circle sites in this subdivision. In  
9 consultations those were considered very significant.

10 I negotiate a preservation covenant with the  
11 private developer to create green belts or preservation  
12 easements for those areas. I had some difficulty negotiating  
13 that with the state, but there is an organization called the  
14 Historic South Dakota Foundation that will assist private  
15 landowners who want to develop these sorts of easement  
16 situations on their land. As an extra incentive private  
17 landowners can receive some tax credit for that, as well.

18 This applies mainly to historic buildings, but  
19 recently also applying to archeological properties that are  
20 acres of lands, instead of structures. After the private  
21 landowner talked to his attorney, he decided that this  
22 constituted a Federal taking, and that he wanted to sue the  
23 Bureau of Reclamation because we had the responsibility to  
24 comply with the law, not he. Our attorney talked to his  
25 attorney and he decided to drop the lawsuit.

1 I want to tell you two things. One is there is  
2 an opportunity to negotiate these things with private  
3 landowners, but I also want to tell the Surface Transportation  
4 Board that they may end up in court if they try do it, because  
5 a lawyer could say that's a Federal taking. It may be that  
6 the Tribes would be in a better position to do this. I don't  
7 know.

8 The other thing I wanted to talk about briefly  
9 was sacred sites, Executive Order 13007 says that Federal  
10 agencies shall permit unrestricted access to sacred sites so  
11 those sites or Forest Service managed land Bureau of  
12 Reclamation, Park Service land, I don't have to go through all  
13 the list, I think you get the picture, Indian people have  
14 access to those already.

15 Another personal experience I have is traditional  
16 culture properties. You've heard the word "Bulletin 38"  
17 rattled around here like a BB in a boxcar. I don't know too  
18 many Tribal members who trust me enough to say, Jim, this is  
19 important to me. This is a sacred spot. This is a  
20 traditional cultural property. I want you to record this on  
21 Bulletin 38.

22 I haven't met one person yet that wants me to do  
23 that. They want me to agree to manage that as a sacred site,  
24 to consider the effects of my projects to that site, but they  
25 have not wanted it inventoried, and it doesn't have to be.

1 All we have to do is manage it like Tribal people would like  
2 it managed.

3 Now in the government we look at sites three  
4 ways, archeological sites, is this eligible for the National  
5 Register of Historic Places, and there's a criteria we apply  
6 to a site to make that determination.

7 Now on federally managed land we use criteria  
8 A, B, C and D. If that site does not meet those criteria,  
9 if that site lacks those qualities necessary for listing on  
10 National Register of Historic Places, we have no further  
11 management responsibility. That site could disappear. It  
12 could disappear in a lot of ways. It could be in a project  
13 area, or it could suffer from passive decay. It could erode  
14 away.

15 If that site is eligible for National Register,  
16 that creates a new level of responsibility. Now if those  
17 sites, for example on easement, are eligible for National  
18 Register, then there is some responsibility for preservation,  
19 or mitigation if they can't be preserved. But if those sites  
20 are not eligible for National Register, there is no Federal  
21 responsibility for preservation.

22 And I wanted to draw that distinction to your  
23 attention. You may not be happy with it. The new 36 CFR  
24 regulations accommodate Tribal consultations on determinations  
25 of eligibility. If these sites are on within the exterior

1 boundaries of a reservation, for example, then the Federal  
2 official, myself and the tribe will consult on the eligibility  
3 of that site for National Register, and we try to reach  
4 consensus.

5 If those sites are not within the exterior  
6 boundaries of the reservation, I thank you very much for your  
7 opinion and I still go by the criteria of eligibility as  
8 described in 36 CFR 800, it sounds like. If anyone would like  
9 to talk to me on the side, I would welcome your questions or  
10 your opinions.

11 MR. ALLEN FLYING BY: (Speaking in Lakota.)

12 All my life I grew up being rebellious from day  
13 one because we went to school, because we couldn't speak the  
14 English language like most of the people here. They try to  
15 beat it out of us, and ever since then every time I see  
16 someone with a suit on or a tie or something, it upsets me.  
17 And you come into our Indian land and say that you're going to  
18 do this and without consideration of who we are and how long  
19 we've been here and how our people have lived for the past  
20 generations, ever since the first coming of the three ships,  
21 or whenever, you know, people got here.

22 But aside from that, you kept referring that you  
23 owned land. I was wondering where you owned land; is that in  
24 Scotland or Europe, or is it in Indian country or where is  
25 it?

1 MR. KEVIN SCHIEFFER: Out of respect. I was  
2 talking about our existing right-of-way where we would hold  
3 land, and then where we're trying to build another line, I was  
4 simply drawing a legal distinction between if there are areas  
5 where we would purchase land from a private landowner.

6 MR. TERRY GRAY: Non Indian.

7 MR. KEVIN SCHEIFFER: Well, Indian or non Indian,  
8 and if it was fee land we would have to go through the BIA  
9 process that was discussed before. But in any event, I'm  
10 talking about the land that would be owned in fee.

11 Now I clearly recognize that there is not an  
12 acre of land in this country that anybody owns in fee, that  
13 should be recognized as anything other than a violation of  
14 the treaty. If we went by the 1868 treaty, we couldn't be  
15 here today except on invitation. The Federal government had  
16 a responsibility to eject us.

17 And that's part of the sad history that I was  
18 talking about. But it is history, so I wasn't trying to be  
19 presumptuous. I was just talking about the land that we  
20 actually own on our existing right-of-way, whether we hold it  
21 because of a legal system that has been unfair, or not. I  
22 think -- I don't stand here and judge it, I'm just drawing  
23 that distinction. So that's the land we're talking about.

24 MR. ALLEN FLYING BY: The other thing that  
25 concerns me is we have, like some mentioned, a trust

1 responsibility that the government has with us, and like these  
2 people here are all agencies of the Federal government and  
3 they have a responsibility to protect us and protect that  
4 trust responsibility.

5 But the way you come on and talk, it almost  
6 sounds like you already gotten everything done and the only  
7 thing you're worried about is these roadblocks that our  
8 people are putting up to try to prevent this from happening.  
9 So I guess, you know, the other question is what's like a  
10 round figure of the cost of this whole project?

11 MR. KEVIN SCHIEFFER: First of all, we don't  
12 take anything for granted, and it certainly isn't all done,  
13 and the Federal agencies have reminded us of that many times  
14 over the course of the last three years. I think there has to  
15 be proof and demonstration that there is a public need and  
16 it's in the public interest. And even if, in fact, that  
17 occurs, I'm very sensitive to the trust obligations.

18 For three years as U.S. Attorney I was an  
19 officer that was charged with that same trust obligation, and  
20 I think I understand it pretty well, and I think I got in a  
21 lot of trouble in this state for fulfilling that  
22 responsibility. But I take great pride in that, quite  
23 frankly, and so we're not trying to do anything to upset  
24 that. I have a long record on Tribal sovereignty and Tribal  
25 rights, and I'm very proud of it.

1 With respect to your last, the last part of your  
 2 question in terms of how much it costs, frankly because of  
 3 all the changes that we made, the price tag is going up. I'm  
 4 not sure where it's at, but I would put it in round figures  
 5 at about a billion and a half dollars for the capital costs.  
 6 MR. ALLEN FLYING BY: How many Native American  
 7 people does DM&E currently employ?  
 8 MR. KEVIN SCHIEFFER: Part of what we're talking  
 9 about in the Programmatic Agreement, and more importantly the  
 10 Memorandum of Agreement, is a program designed to reach out  
 11 for that employment. Today out of our existing employee base  
 12 how many are tribally enrolled, I don't know the answer to  
 13 that. We don't -- I don't look at it as an equal opportunity  
 14 employer. I don't know what the number of applications we've  
 15 had are or the number of employees, but it is something that  
 16 we are aggressively trying to do as part of this project.  
 17 And I guess I would be happy to go back and look  
 18 in our records in terms of how many applications we've had,  
 19 but I don't know the answer to that question. But we are  
 20 trying to actively recruit.  
 21 MR. ALLEN FLYING BY: (Speaking in Lakota.) It  
 22 seems like we all have a lot of beads already. We have a lot  
 23 of commodities, and lot of blankets and we now have casinos.  
 24 Every one of these people come in with a false proposal, and  
 25 the only time they are interested in us is when they want

1 something from us.  
 2 And a lot of people here have said over and  
 3 over, and this continually happens, you know, you propose  
 4 like, you know, we can make contributions to education  
 5 programs, and stuff like that. We need those things, and  
 6 that's what it seemed like the government and other  
 7 corporations, rich people have always used to fool our  
 8 people, say they are going to do really good things for us,  
 9 and when we allow them to come into our land and our homes  
 10 and, you know, let them educate the children and all this  
 11 stuff, they turn around and apply a foreign law to our  
 12 people.  
 13 And those are the things that are hurting our  
 14 people, and so I know you probably have your sincere effort  
 15 to help our people, but one of the most important things,  
 16 and I think what you need to keep in mind, is that there is a  
 17 strong voices here indicating that there needs to be, you  
 18 know, a lot more time, a lot more research, and for me, like  
 19 my concerns like on our reservation and all of our  
 20 reservations, how much has your company or corporation  
 21 contributed to improve their life-style, not make it better,  
 22 but improve it so they lead a decent life?  
 23 Like someone mentioned, they are sitting at home  
 24 waiting for their furnace to be filled up. Now before I came  
 25 over here my furnace was turned off. You know, I have a

1 teaching degree, but I'm not employed. How much has your  
 2 corporation contributed to our reservations to help improve  
 3 their life-style? Zero.  
 4 MR. KEVIN SCHIEFFER: I don't know the answer to  
 5 that, but I do want to emphasize something to you. I'm not  
 6 here, as I said earlier -- and I'm happy to answer any  
 7 question that I can, and I think a discussion like this is  
 8 very healthy, but I emphasized in my opening remarks, and I  
 9 want to emphasize again, we're not here lobbying or asking for  
 10 anything.  
 11 As I understand this meeting, it's a  
 12 government-to-government meeting. We are here to try to  
 13 reach out and to develop a cooperative process, because I  
 14 think that makes sense. I think that's a good way to do it.  
 15 But we're not asking for anything, we're simply trying to work  
 16 through the problems we can work through and where we can't,  
 17 recognize those and acknowledge it and move forward.  
 18 MR. ALLEN FLYING BY: Here's what we're trying to  
 19 do is bring out the hidden agendas that exist. Someone  
 20 mentioned you're going to haul coal out of -- one of the main  
 21 purposes as to haul coal out of treaty land, you know, and so  
 22 where is this money going to go? It seems like the coal  
 23 companies should be here because it seemed like those people  
 24 you must have contacted or worked with. You have to have a  
 25 purpose to build a railroad through the country, and so what's

1 -- what are the main purposes of it? You have to have that  
 2 before you submit some kind of proposal to the government. I  
 3 know it's not for employment of Indian people.  
 4 MR. KEVIN SCHIEFFER: Well, our agenda is laid  
 5 out very specifically in our Application, and there is no  
 6 hidden agenda from our standpoint. I understand your point  
 7 about where the coal is being produced, and that was part of  
 8 original treaty land. And frankly, if that treaty hadn't been  
 9 violated or abrogated through the 77 Act, which I'm not here  
 10 to argue or try to defend or anything else.  
 11 It's a sad part of history, as I said before,  
 12 but if that treaty was followed, that coal could never have  
 13 been developed, and shouldn't have been, if the treaty were  
 14 to have been followed. But that's a historical thing that's  
 15 not something that a private company controls. That was  
 16 something that was done in 1877 by Congress, and there's a  
 17 long, long history to that that you know far better than I.  
 18 I'm not here to defend it today.  
 19 We're dealing in a world, trying to comply with  
 20 the laws as we understand them. So I don't know how to answer  
 21 the treaty issue. I think it's a very legitimate one from a  
 22 historical perspective, but that is not what we're about, and  
 23 we don't have a hidden agenda.  
 24 MS. IMOGENE TAKEN ALIVE: My name is Imogene  
 25 Taken Alive from the Standing Rock Nation. I have a very

1 concerned question here, and it's bothering me all this time.  
 2 I'm sitting here quietly, why and who initiate this railroad  
 3 coming through South Dakota, and what is the purpose? I hear  
 4 you're the president, and would you please tell the group here  
 5 who and what moneys are you using to initiate this railroad  
 6 across our land?

7 And before you answer me, because whoever is  
 8 doing this nevertheless didn't even care that there are  
 9 treaty lands in the State of South Dakota that needs to be  
 10 negotiated. But the top is what I want to know, who  
 11 initiated, and what is the purpose for this railroad going to  
 12 be built across State of South Dakota?

13 MR. KEVIN SCHIEFFER: Okay. First of all the  
 14 list of the owners of DM&E are part of our Application, and  
 15 it's a complete list. It isn't required by law, but we put a  
 16 complete list in the Application in terms of who the  
 17 shareholders of DM&E are, in terms of the financial backing  
 18 question you asked.

19 In terms of the idea for this railroad, the  
 20 railroad we operate today, just so we're sure everybody  
 21 understands it, we have about 1200 miles -- 1130 miles of  
 22 railroad today. That operates all through the State of South  
 23 Dakota from Wyoming all the way through South Dakota into  
 24 Minnesota. That was built in the late 1800s and early 1900s  
 25 and then --

1 MS. IMOGENE TAKEN ALIVE: Mr. Schieffer, I'm well  
 2 aware of that. What I'm asking you is this railroad that  
 3 you're --

4 MR. KEVIN SCHIEFFER: I understand that, and I'm  
 5 getting to that. I wanted to make sure the background was  
 6 said here. We are now looking at building an extension off  
 7 of that railroad for 260 miles, and that originated -- there  
 8 were really two national policy issues that are driving this  
 9 project; one is the Clean Air Act. From an environmental  
 10 standpoint the market demand, because of the Clean Air Act  
 11 there is an increased demand for the cleaner, lower sulphur  
 12 coal that happens to be in the area where we're proposing to  
 13 develop to, in terms of this extension. And that is one of  
 14 the driving issues.

15 The second is the energy deregulation that's  
 16 going on around the country. And in addition to being the  
 17 cleanest coal in the country, this is also some of the lowest  
 18 cost coal in the country. And with the new competition that  
 19 comes with deregulation, there's a greater demand for that.  
 20 That is as it relates to the coal part of the projects.

21 However, I emphasize this project is about a lot  
 22 more than coal. It's about our existing railroad, and why I  
 23 went through that original history of our existing line is  
 24 the fact that it is over a hundred years old. It is worn out  
 25 and it needs to be rebuilt. We don't have the traffic base to

1 do the kind of work that's needed to save that line, or make  
 2 it viable for the long term, and that's a very big part of  
 3 this project, to rebuilt that old railroad.

4 And that's why I went through the history of  
 5 that to begin with, and those are the things -- the reasons  
 6 behind developing this project, some of them. There are  
 7 others, but that's -- those are the fundamental ones. If I  
 8 understood your question correctly, did that answer it.

9 MS. IMOGENE TAKEN ALIVE: Well, to a certain  
 10 extent, but what I'm getting at is why is it going to be  
 11 built and who's doing this and where is the coal going and  
 12 these are some of the questions. It's simple questions that  
 13 needs to be answered by the people that are sitting over  
 14 there.

15 And the reason -- I'm not a racist person but I  
 16 was brought up and I have a grandfather that died when he was  
 17 a 104 with all his limbs and everything was intact when he  
 18 died. He told us that always keep one eye open to the white  
 19 man. He told us that as a Tiospa, and so I'm part of that  
 20 Tiospa and I still have that, and I'm not -- like I said, I'm  
 21 not a racist, and I always tell my children that, to always be  
 22 very careful. And so I'm kind of leery about this whole  
 23 thing.

24 I went to Rapid City. We testified in front of  
 25 two or 300 people. If you recall, we testified as -- I belong

1 to an elder group called Oceti Sakowin, and there were nine or  
 2 ten of us that testified about this railroad, and you were  
 3 there and a lot of the ranchers and the farmers over there are  
 4 against this, too. One even said that, Why don't you build it  
 5 right through the cities, that way you'll have no problems,  
 6 one of the farmers said, and I agree with that.

7 Well, anyway, I wanted to express my feelings  
 8 and opinion. I've been very quiet, and I'm not one to speak  
 9 in public because my belief system is different from a lot of  
 10 these women sitting here. I have a husband that I support all  
 11 my life, and I don't speak and I'm used to not speaking. One  
 12 of these days I'll overcome that and you'll see me standing in  
 13 the front.

14 But until then, I just wanted to have -- I don't  
 15 feel good about this whole situation, and we just took a vote  
 16 and we said no, but we're still sitting here, and what I  
 17 wanted to stress today here, too, is that there are so many  
 18 laws that you put against us, this law and that law and this  
 19 law, now we're numbered. We have a number, and we're the only  
 20 human beings on this continent where we're numbered, and  
 21 that's the enrollment.

22 So we're defined -- they are trying to divide  
 23 and conquer us, but you know I don't think they can conquer  
 24 us because our children that are coming are well-educated  
 25 college graduates and they speak their language fluently, and

1 they also can substitute words and make changes in words,  
 2 like it has been done before. Our Indian students -- our  
 3 young Indian people can do that.  
 4 This young man that speaks over here, he's my  
 5 nephew. He has his college education. He graduated with  
 6 teaching education, bachelor of education. Anyway, he  
 7 doesn't have a job because there's hardly any jobs in our  
 8 communities, and we're going to stand up and we're going to  
 9 be heard.  
 10 And I'm going to be one of the elders that are  
 11 going to stand behind these young people, because we need --  
 12 like Mr. Red Cloud always says, we have human rights here, in  
 13 the United States. We're the first people here. Always  
 14 remember that. We're the first ones here.  
 15 I just wanted to say this because in this world  
 16 I've been hearing different people saying comments that this  
 17 is all cut and dried. No matter what we say, it's going to  
 18 go through. I hear some of the people talking like that, and  
 19 if so, this is very, very bad that you come, waste our time,  
 20 your time to come here and do it if it's already cut and  
 21 dried.  
 22 So these are some of my concerns, and it bothers  
 23 me and I have to say something, because when I get home I'm  
 24 going to tell my people what we are experiencing here. Thank  
 25 you for listening.

1 MR. KEVIN SCHIEFFER: Thank you, and let me say I  
 2 certainly understand. I understand your mistrust, and I don't  
 3 consider it racist in any way. I consider it very practical,  
 4 based on frankly many decades or generations of bitter  
 5 experience, and I can't speak for that. I can speak for my  
 6 company, and I can tell you our agenda is laid out clearly.  
 7 We're not trying hide the ball.  
 8 In terms of your initial question as to who this  
 9 is going to, the markets and utilities are laid out in our  
 10 Application, which isn't quite as long as the EIS, but it's a  
 11 very long document as well. Fundamentally the folks who would  
 12 get this, would get the coal portion of this project, are the  
 13 utilities in the Great Lakes and the Chicago Gateway area and  
 14 the upper Midwest, are the three primary markets. So the  
 15 detail of that is laid out in the Application.  
 16 But more fundamentally to your other question, I  
 17 guess, the only thing I can say is I can't pretend to  
 18 understand it all, but I think I have a flavor for an  
 19 understanding of your fundamental mistrust, and I respect it,  
 20 and I don't know what else to say about that other than we're  
 21 trying to do this the right way.  
 22 MS. MARY JANE TIOKASIN: I'm Mary Jane Tiokasin  
 23 from Standing Rock, and I'm not going to ask these questions  
 24 just to be picking on you. I've also picked on Dave Vader and  
 25 he's here today. But when I first came in here and saw you --

1 I hope there's no Republicans in here or we'll get it -- I  
 2 thought you were Al Gore. I did. You look just like him and  
 3 -- but the questions I have for you, Kevin, I'll read them to  
 4 you, and then you can answer them as you wish. Who is paying  
 5 for this project, that is an awful large project; and then  
 6 number two is who owns the railroad?  
 7 And you know, when we were in Rapid City there  
 8 was a lady that stood up and said her name was Senator Rau and  
 9 she said with this railroad -- she supported it and with this  
 10 railroad coming through she said there will be 5000 jobs  
 11 available for this railroad -- or 10,000 jobs, and so -- and  
 12 then we need to know, I always call them -- Wendy and them  
 13 little people, because they are, they get their orders from  
 14 Washington, D.C., and is there any easements granted as of  
 15 such here?  
 16 Like I'm always suspecting, because I worked for  
 17 the government for many years and, you know, even when  
 18 something is cut and dried they ask you to go back to  
 19 Washington and say, well, we spoke to them. And so these  
 20 names that are on here -- you don't have to answer this,  
 21 Kevin, but the names that are on here, when they have no  
 22 response -- this is for you Wendy, when there's no response  
 23 on here, does that mean you take that as a yes, that they  
 24 approve of it?  
 25 That's what I want to know for myself, so I

1 could write it and then why -- well, when I got up and spoke  
 2 in Rapid City, I told them, I said that was a lie, the jobs,  
 3 5,000, 10,000 jobs forever on the railroad?  
 4 Because I said, that's primary, when that  
 5 railroad is being built and when it's done being built, when  
 6 the project is all completed, there's not going to be 5,000  
 7 jobs. There's going to be only two jobs on the railroad, the  
 8 engineer and the caboose man, and so that jobs are shot.  
 9 Yeah, the construction only.  
 10 And you know, we're not dummies. I might look  
 11 like it, but I'm not, you know, and I really think that, you  
 12 know, you're answering our questions the best you can, and  
 13 you're not like Dave, saying I have to go back to Washington  
 14 and get the answer, so if you can just answer these questions,  
 15 thank you.  
 16 MR. KEVIN SCHIEFFER: Well, I'll have to go back  
 17 to Washington and get the answer for that. First of all  
 18 thank you for the Al Gore comment. Someone at lunch told me I  
 19 look like Jim Carrey. Frankly today I would take either one.  
 20 You asked first of all who owns the DM&E. As I  
 21 mentioned before, the list of our shareholders, all the  
 22 shareholders are listed in the Application. Frankly the  
 23 majority of the shares at DM&E are held by pension funds,  
 24 whether it's labor -- a lot of it is labor union pensions,  
 25 both -- there are, oh, you call it institutional investors

1 beyond pension funds they are -- oh, there's one corporation  
2 that has interest in DM&E.

3 No single shareholder owns more than I think ten  
4 or eleven percent of DM&E's stocks. So there is no majority  
5 shareholder. All of the individual shareholders are listed  
6 in the Application. Most of those you will find are what we  
7 call institutional investors, whether they are pension funds  
8 or what have you. And that's the answer to that question.

9 I can go through the list. There are probably  
10 sixty shareholders -- I shouldn't say that -- it's not very  
11 smart for the president standing up and can't say who all the  
12 shareholders are, but I can't name them off the top of my  
13 head. But there are -- that's who owns it.

14 MS. IMOGENE TAKEN ALIVE: The understanding that  
15 we have is person that owns this whole thing is from Scotland;  
16 is that true?

17 MR. KEVIN SCHIEFFER: No, there are a lot of the  
18 pension funds that I'm talking about. There are a lot of  
19 United Kingdom and some of that would be -- most of that is in  
20 England, or some of it -- no, I think pretty much all of it is  
21 in England. So there's some U.K. investors, maybe that's  
22 where that came from. One is called Scottish English Trust,  
23 but that's actually an England holder.

24 Those are primarily the pension funds, the union  
25 owners, and then in terms of who is paying for this project,

1 I assume you're asking who is paying for one and a half  
2 billion dollars, and the answer to that question is very  
3 simply I don't know. Unlike David, I won't say I have to go  
4 to Washington and find out. I have to go to New York and  
5 find out.

6 The reason for that is -- I'm being a little  
7 facetious here, it will be something that most likely will  
8 be funded through the Wall Street type of investment, or  
9 brought on by bringing in a strategic partner. But right now  
10 that has not been determined. There are investors out there  
11 who have expressed an interest in it, that ranges from Wall  
12 Street to the utility industry to a host of different  
13 possibilities.

14 There's a lot of possibilities, and a lot of  
15 people who have expressed an interest. But until we get  
16 through this regulatory maze, we probably won't know the  
17 answer to that because of all the uncertainty that's out  
18 there. It may seem cut and dried to you, but it doesn't look  
19 cut and dried to Wall Street or to us. So that's the best I  
20 can answer that question.

21 In terms of the number of jobs, five to 10,000  
22 jobs, I don't know who quoted you 10,000 jobs, but that's not  
23 accurate --

24 MS. MARY JANE TIOKASIN: Senator Rau.

25 MR. KEVIN SCHEIFFER: I never want to disagree

1 with anybody whose first name starts with "senator" so -- I  
2 take that back. There have been estimates done on this. The  
3 real answer to how many jobs, nobody knows. Nobody sits down  
4 and figures that out in advance.

5 There are estimates done by economists, and I  
6 think they estimated about 5,000 construction jobs over a two  
7 to three year period. After the railroad is built there will  
8 be approximately 1800 to 2000 permanent jobs, but that's  
9 including our existing employees. So I would guess there  
10 would be like 1500 new jobs, new railroad jobs created and  
11 another 2000 support service jobs that are estimated.

12 So maybe he was adding all those up. I don't  
13 know. So if you're talking just permanent railroad jobs,  
14 you're talking about 1500, I would guess roughly at full  
15 operations, and that's even ten years from now.

16 And then let's see, I think, oh, easement; what  
17 was the easement portion?

18 MS. MARY JANE TIOKASIN: Was there any easement  
19 granted as of yet.

20 MR. KEVIN SCHIEFFER: No, no easements have been  
21 granted as of yet. That's what this regulatory process is  
22 about, and that's it.

23 MR. OLIVER RED CLOUD: (Speaking in Lakota.)

24 You know, I'm really surprised sitting here  
25 working with Indian people all my life and Indian bureau and

1 Indian treaty, whatever, and today you say looks like I could  
2 see the picture. Now I could see the picture of how you guys  
3 are going to work this government. I've heard Indian bureau  
4 accept white man's world and a treaty world, and today you're  
5 talking, you say that railroad is going to be good. I don't  
6 think so.

7 There's a lot of killing today of Indian people.  
8 We try to take them to court a lot of ways, and this treaty  
9 here come through here. We have some Indian kids, a  
10 generation, how about these people that are going to get run  
11 over, that they are going to run over. We have to put a law  
12 in there, because it's going to run over a lot of Lakota  
13 people. You have to look at that, too.

14 And present jobs, you see, well, that's in the  
15 past, so many years the government just put out a little bit  
16 to take care of us. Is the railroad going to take care of  
17 us? How much money are we going to get out. See all these  
18 questions?

19 I can see the picture now. I said that railroad  
20 track was going to be good, now I have to tell you, the people  
21 on the radio station, and all nation wide or other country,  
22 United Nations, I thought Indian Bureau was supposed to take  
23 care of us, our problems, not work against us. That's why we  
24 put a secretary there. See our problem is going to work good  
25 or bad.

1 Now we passed a resolution here before noon and  
2 we're against it. Now we have to fight you, too, because the  
3 way you talk, you know that's the way it works the lives, the  
4 treaty on the United States Constitution, that's the way they  
5 work it. We put our arms down, we're supposed to work it  
6 out. We don't want this. We told you. We told the people,  
7 and you still come back and try to tell these Lakota people.  
8 The Indian Bureau go under that, so many years, I worked under  
9 that for 35 years. I know what policy is in the government.  
10 So.

11 (Speaking in Lakota.)

12 And four years ago State of South Dakota wants to  
13 take our Indian rights away in Washington. They are going to  
14 ruin our treaty rights. So we have a problem. We are against  
15 it, and one thing we are against it, we went back to  
16 Washington again because there's a lot of non Indians working  
17 for Lakota Bureau, they do that. You fellows need other  
18 jobs. State needs to put their own man in.

19 All this here we went through, so I asked at that  
20 time, Mr. Red Cloud, self determination, self government what  
21 are you going to do? Where are you going to get your money?  
22 Okay, I'll do it this way. All the State of South Dakota,  
23 Indian territory, all the people that live there. All the tax  
24 money goes to the state because that's our land, and we put  
25 away from your government, put over here with your back to the

1 nation again, and that's for our future, our younger people.  
2 All that money comes to us, and we don't have to bother you.  
3 That's a question I give them.  
4 So there's a lot of things I do that people don't  
5 know. Park Service they lie to me. Edgemont, on the other  
6 side found four or five bodies over there, graves, and  
7 Washington went to Denver and our superintendent say, Hey, we  
8 found some bodies over there. So Mr. Red Cloud, you come to  
9 the Black Hills and choose the land where we can bury those  
10 people. You can find anything like that, you put it in there,  
11 because right now there's a lot of roads, missiles, whatever  
12 is building, and there's a grave there. We're going to put it  
13 there.

14 So, okay, on the other side of Hot Springs 20  
15 miles that way I choose a beautiful place there. So when I  
16 brought some people from Washington 40 of them that time,  
17 brought them in wagon box, everything, they cut there necks,  
18 they hang them, they kill them. They got them back, and so  
19 I'm going to put him over there. He says, No, they want one  
20 day job, we bury them. We got our land back. They fool me.

21 So now I have to look around find another place.  
22 I bury those people, you know, things like that the parks men  
23 do, and I'm not -- like people here, I was born in 19 -- I  
24 know what's going on. I do a lot of research. I'm glad I  
25 stayed. I hear him talk, our friend here, but --

1 (Speaking in Lakota.)

2 Now we have to fight. I don't know, we have to  
3 fight our own government, Tribal government and our bureau  
4 because the way he says, I know what they got in the mind, I  
5 can see the picture of what they are thinking. Oh, we find  
6 Daschle, we find Janklow, he told me one time, Mr. Red Cloud,  
7 don't you know you're a citizen of the United States. You  
8 tell me any document my grandpa raised his hand going to be a  
9 citizen of United States, you throw me a -- in 1924 he said,  
10 no, that's not us.

11 There's a lot of things that you have to answer.

12 So today these got a job, they got a job, probably these  
13 railroad track goes through, they probably fire them guys,  
14 put different people in there. They don't trust each other.  
15 So now probably you go back and going to start using that  
16 phone, hey, see that's where the people work, white people.  
17 I don't trust them. That's why they kill Crazy  
18 Horse, turn around and blame the tribe and say their own  
19 people kill him, no. Crazy Horse is buried someplace over  
20 there. All the graves are up there, too. I wonder if Park  
21 Service is clear. I have to see a paper that it's all clear.  
22 There's nothing there yet.

23 There's a lot of things you got to see, and I  
24 know there's a next generation that's going to take care of  
25 this. I won't be around. I'm fourth generation old chief

1 that make that treaty, and I'm still here, and I'm still a  
2 Lakota treaty son. My grandfather, that's why we have all  
3 these young people have an education, treaty rights,  
4 education, religion, and the government today, them three  
5 things. People have to understand this is the treaty we're  
6 talking about, our rights.

7 My grandpa do a lot of fighting. Did you ever  
8 read the history, he burned all the forts before he made  
9 that treaty. You ever read The History of Red Cloud, Crazy  
10 Horse, Spotted Tail, Sitting Bull, that's why I'm here. When  
11 people talk about treaty, they got their mind on something.  
12 They try to get rid of it. They are going to put in the  
13 public 280 law. There's a lot of things involved, so we have  
14 to really be careful what we're doing here.

15 I trust you guys. I have -- I'm giving you a  
16 good education. We spend a lot of money. People don't  
17 understand, today one child cost \$3,000, a child today, all  
18 over the reservation. Look how much money we spend one year  
19 24 million dollars; that's all these. There's a lot of  
20 things that we don't see. We don't know our rights. So  
21 that's why I have to tell you that, because we might have to  
22 -- you'll probably be on the other side, sitting on the other  
23 side when you go to court, and I don't want to see that.

24 (Speaking in Lakota.)

25 MR. TERRY GRAY: Charmaine. How much time do you

1 have left?

2 MR. KEVIN SCHIEFFER: Probably about 45 minutes  
3 ago. I was supposed to have left around 2:00, but I see it's  
4 a little after three now, and I'm running very late, but I'll  
5 be happy to try to answer any specific questions I can.

6 MR. TERRY GRAY: There are a couple items, but  
7 after Charmaine addresses her question, there is the Medicine  
8 Wheel Coalition that addressed some stuff earlier, and they  
9 would like to address it personally to you, so just right  
10 after Charmaine.

11 MS. CHARMAINE WHITE FACE: Mr. Schieffer, my  
12 name is Charmaine White Face. In most of the remarks I've  
13 given to these people here have always been about the treaty,  
14 but what I want to talk about is something else. I'm a  
15 Lakota, Oglala Lakota, so my perspective on things comes from  
16 that point of view. But I'm also a biologist. I've taught  
17 about the environment in colleges for quite a few years.

18 In 1991, just prior to the bombing in Kuwait I  
19 was at a meeting with a number of other scientists, and at  
20 that time what was brought out was the projections of how much  
21 more carbon dioxide, carbon monoxide could go into the  
22 atmosphere without really, really hurting the world. It  
23 wasn't very much. We were talking about the number of oil  
24 wells that could be blown up in Kuwait, and I think the number  
25 was like eight, and I forget how many hundreds of oil wells

1 were actually blown up, but it was actually in the hundreds.

2 I used to be also a member of the Union of  
3 Concerned Scientists and it's an international organization  
4 concerned about the environment. When I speak, I told you my  
5 perspective was also from a Lakota perspective. There is  
6 something we say when we pray -- (Speaking in Lakota.)

7 All my relatives, it doesn't just mean two legs.  
8 It doesn't mean all these people in this room. It means you,  
9 too. It doesn't just mean human beings, it also means these  
10 molecules floating around in the air. Whenever they mine this  
11 coal over in Wyoming, Powder River Basin, I'm not going to  
12 talk about the legalities of ownership of the coal, although I  
13 will say we don't agree. When they mine the coal they put  
14 fertilizer, nitrogen compounds inside of there and then they  
15 put diesel fuel, or other kinds of fuel to blow it up.

16 Already on the Pine Ridge Reservation the air  
17 quality monitors are picking up nitrous oxides, silver oxides,  
18 different kinds of silver oxides, and the organic, carbon  
19 components, pollutants.

20 I guess my question is this, especially since  
21 the United States is really backing down from the accords,  
22 it's difficult for me to think of environment or pollution of  
23 the environment only in terms of the Black Hills, or in terms  
24 of the Pine Ridge Reservation, although that's my  
25 reservation. I have to think, if I pray, if I am a Lakota and

1 I pray -- (Speaking in Lakota.) -- I mean the whole world,  
2 every molecule that goes up there.

3 We're already receiving pollution from those  
4 mines at Pine Ridge. The National Park Service is picking  
5 them up on their monitoring. Has the DM&E, or has the  
6 company as a corporation, because I know that the people who  
7 are going to be buying your coal are the utility companies in  
8 the east, Edison Electric for one, have they thought, or has  
9 your company's board of directors thought of instead of  
10 spending this one and a half billion dollars on this railroad,  
11 which has so many legal and other kinds of roadblocks, have  
12 they thought of doing other things, like biomass, producing  
13 biomass for energy, using wind generation or solar power? We  
14 have all of that, and you could get all of that alone in  
15 Eastern South Dakota, not have to touch Western South Dakota,  
16 or even trying to stop the coal mining now, because all of  
17 that, you know, is -- (Speaking in Lakota.) Thank you.

18 MR. KEVIN SCHIEFFER: Charmaine, you asked a  
19 fundamental question, I probably don't have the technical  
20 ability to answer, but I can give you my best shot at it,  
21 because it is something that as a member of this planet that  
22 I certainly think about.

23 With the actions this past couple of weeks with  
24 respect to the Kyoto protocols, as a member of the planet  
25 that is something that concerns me greatly. We have

1 increasing scientific evidence coming out on global warming  
2 and climate change, and it's a very serious and legitimate  
3 issue.

4 What is happening at the global level or national  
5 level with respect to that is obviously not something we  
6 control. We have looked at all kinds of ways, our fundamental  
7 driver in this is to figure out a way to keep our company  
8 alive and viable, and keep the employees and everyone involved  
9 moving forward in a responsible way.

10 Is this the most responsible way? We think it  
11 is. Would it be better for the planet if we could figure out  
12 a way to tap into solar or biomass or wind energy in a more  
13 efficient way? Absolutely. That hasn't happened yet. The  
14 technology isn't there yet to make that happen.

15 There is a fundamental policy direction that is  
16 set at the global level, at the national level that's going to  
17 drive those issues. Whether we continue with a policy of  
18 clean carbon energy or dedicate the resources and accept the  
19 economic pain of switching to a more environmentally friendly  
20 alternative before the technology is there that makes it  
21 economically feasible, those are not things that we control.

22 We work in the world in which we find ourselves,  
23 and with the policies that we find ourselves, and in the  
24 current policy arena there, as I said at the outset, one of  
25 the things that's driving the project is the Clean Air Act,

1 and there are estimates on the macro level, if you will, that  
2 this project will substantially decrease the amount --  
3 certainly sulphur dioxide emissions in the air, but I know  
4 that's not one that you mentioned. But I don't know exactly  
5 what the numbers would be for the CO2 and other areas that you  
6 mentioned.

7 But there are environmental, strong environmental  
8 benefits and incentives that relate to this project. And  
9 given the policy world that we're living in, and the economic  
10 realities that we're living in right now, we think this  
11 project has very strong environmental benefits.

12 Would it be better if we could plug into the sun  
13 today, or the wind, or biomass? Absolutely. But it's not  
14 there and no one has figured out an economical way to do it.  
15 There are a lot of experiments, and for the sake of everyone  
16 in this room and our children and grandchildren and  
17 generations to follow I hope that's sooner rather than later.  
18 But it's not there from a policy level, or a technology level  
19 right now, and until we get there we think this is a better  
20 alternative environment than what is out there today.

21 And as I said, this project is very much driven  
22 by the Clean Air Act and environmental benefits that come out  
23 of that. That's primarily, I think, relating to the sulphur  
24 dioxide area. You talked about the carbon, and I don't know  
25 enough about the technicalities to answer that question.

1 But I guess the simplest way I know how to  
2 address your question, and this maybe isn't acceptable from a  
3 purely environmental standpoint, if we're all willing to  
4 accept from a policy standpoint the pain that would go with  
5 an earlier transition out of the carbon-based fuels, but  
6 given what we have to work in, this is, I think, in plain  
7 talk, sort of way -- maybe the lesser of the evils that are  
8 out there.

9 Maybe that's not a satisfactory answer, but  
10 that's my very basic understanding of it, and the best I can  
11 do.

12 MS. WOODEN KNIFE MEDNANSKY: Hello. I'm Oleta  
13 Wooden Knife Mednansky from Swift Bear Community. I have  
14 about three questions to ask you. Is there an abandoned --  
15 the old abandoned Milwaukee line that DM&E plans to use, who  
16 owns the land or who has the right-of-way to that land today?

17 And the stockholders that you're talking about  
18 with DM&E, are they preferred or common stockholders or is  
19 anyone eligible to become a stockholder here?

20 MR. KEVIN SCHIEFFER: First of all, with the  
21 exception of a very small part right where it crosses the  
22 Missouri River, it does not use the old Milwaukee  
23 right-of-way. But I think there is a mile or two, roughly,  
24 where it crosses -- what did I say, the Missouri River? I  
25 meant the Cheyenne River. It does not use the old Milwaukee

1 right-of-way except for that area. Who owns it? I think the  
2 State of South Dakota owns the right-of-way there today.  
3 And the shareholders I was talking about were  
4 the common stock shareholders. There are preferred  
5 shareholders, they don't have voting rights or anything like  
6 that. They are basically investors, and there are a number  
7 of those, and I don't know if there is any other part of the  
8 question to that; did I cover everything?

9 MS. WOODEN KNIFE MEDNANSKY: I was wondering,  
10 like preferred stockholders they probably would be the ones to  
11 benefit first, right?

12 MR. KEVIN SCHIEFFER: That is I think a question  
13 of how you define benefit. But as a technical, legal matter,  
14 yes. The common stockholders are the owners and controllers,  
15 if you will, of the company. The preferred shareholders, by  
16 law, I think, benefit first, if you will, in the sense that  
17 they have first rights to whatever equity comes out of the  
18 company. But I think the common stockholders are the ones  
19 that stand longer term gains.

20 MR. TERRY GRAY: Francis? Earlier today we were  
21 commenting on the MOA and the Medicine Wheel Coalition, as you  
22 know, takes it upon themselves to protect sacred sites and get  
23 into agreements in regards to that. But Francis made a  
24 request today, not knowing. You know, now that you're in  
25 attendance, I think it's appropriate that he make it an

1 official direct request. Francis, if you would reiterate the  
2 request in regards to --

3 MR. FRANCIS BROWN: Thank you. I've been  
4 sitting here listening to you all talking, and getting one  
5 hell of a good education here. But I think we have to really  
6 sit down and look at facts. What is going to happen. You  
7 know, I've never heard of anybody ever stopping any large  
8 project that is going to go on anyway. So what I'm trying to  
9 do, and what I would like to do here now, is to prepare for  
10 the worst, and that is the right-of-way that DM&E is getting,  
11 and/or is in the process of getting, I guess, is that right  
12 Mrs. Forest Service lady?

13 MS. WENDY SCHMITZER: DM&E has applied for an  
14 easement. They have given us an Application and as I said  
15 yesterday, no decision has been made on that. And that  
16 decision is going to be based on what we learned from the  
17 final outcome of the environmental analysis and through  
18 working with our other agencies and through input from the  
19 company and you.

20 MR. FRANCIS BROWN: Well, I talked about that the  
21 other day and -- yesterday and I think it would be more  
22 appropriate that native people be included in that easement OR  
23 any sacred sites or any kind of cultural resource that is --  
24 the corridor is going to be on, because like I say, we own  
25 those. It's our responsibility to protect those things, so we

1 have to have an easement, too, so that we can protect the  
2 sites that are in that corridor. And I would like to see that  
3 anything a quarter mile on each side of that corridor be also  
4 included in the easement to protect those sites.

5 MS. WENDY SCHMITZER: Are you saying the easement  
6 being 200 feet, you want an additional 200 feet on either  
7 side?

8 MR. FRANCIS BROWN: Either way it works out, but  
9 we also only want one easement, and that's with the DM&E  
10 Railroad and the Native American people and we also want the  
11 Programmatic Agreement changed in a lot of places there  
12 because it doesn't mention any participation of Native  
13 American people involved in writing the Programmatic  
14 Agreement. I didn't see no mention of Native American people  
15 either helping to write the thing, or having their suggestions  
16 in that Programmatic Agreement.

17 I think everybody is going to -- all the  
18 agencies that are working and do have control of the land  
19 that the DM&E Railroad is going to be acquiring to get this  
20 railroad done, is that all the paperwork has to involve  
21 Native American people. And another thing that I heard here,  
22 I don't know if it was yesterday or today, whether any  
23 hazardous waste would happen to be shipped on that line, and  
24 if an accident should happen to occur, I think it was Red  
25 Shirt Table community out there, the railroad is going to go

1 near there, and I think in order to protect our Native  
2 American people from anything like that, we want a statement  
3 from the DM&E that they do not haul any kind of hazardous  
4 material on that line. And so I think, you know, I've been  
5 involved -- I'm president of the Medicine Wheel Coalition, and  
6 we've been involved with a lot of agreements. We've got  
7 easements on a lot of property. We got some -- we have an  
8 easement on about 30 acres of land right downtown Boulder, and  
9 we have also easements on the mesa right above the Federal  
10 building there in Boulder, and that's from negotiation. We  
11 stopped a \$57 million dollar building from being built there,  
12 and it took four years to come up with the easements, the  
13 agreements and everything that went, and they just finished  
14 that building last summer.

15 So it's not hopeless, you know, my people. It's  
16 not hopeless. You know we're trying to stop the railroad from  
17 being completed, but I think everybody knows that we would lay  
18 all baloney aside and prepare for the worst, and at least be  
19 included in the final documents that are going to come out of  
20 the Federal agencies, state agencies, or whoever has land  
21 within that corridor.

22 So I think if we prepare for that, and if it  
23 don't go through, we done prepared for it. If it does go  
24 through, we're in it. Thank you.

25 MR. KEVIN SCHIEFFER: And I will try to address

1 that very quickly. First with respect to the easements, I  
2 think we've addressed that in the record already. We're happy  
3 to work with you as it relates to what we own and control.  
4 There are very serious safety issues that I would have  
5 concerning joint easements, but in terms of providing  
6 easements under right supervision that we control, we would be  
7 happy to do that, as long as it met the legal and financial  
8 test.

9 With respect to the issue of -- you asked  
10 another question, I'm trying to remember -- hazardous waste,  
11 thank you. As I said before on that issue, I have concerns  
12 about the way the EIS is worded now, only in the sense that  
13 it raises it as an issue, and I think it's put in the EIS  
14 because of the concerns that were heard out in Indian  
15 country.

16 So it was put in EIS to that concern, just by  
17 mentioning it, I think as a common carrier we have an  
18 obligation, and I don't think we can contract that away to  
19 haul certain traffic. I don't know how this would or would  
20 not be affected. I would have no problems from a private  
21 agreement standpoint to provide notice and training, and so  
22 forth, if there is significant hazardous materials,  
23 particularly waste materials.

24 You know, the definition of hazardous material  
25 could include fertilizer, and we don't want to get to the

1 point where you are constraining normal traffic, but I would  
2 have no problems with notice and consultation and whatever we  
3 can do, because I don't see in a million years there being a  
4 realistic market or chance of any of that stuff happening.  
5 And if there is, people ought to know about it.

6 So I think you can easily work out notice  
7 agreements. But because of our common carrier  
8 responsibilities, I don't know that we can contractually  
9 agree with anybody not to carry something. That's against  
10 the Federal law, as I understand it.

11 And then the last thing, I guess I would say in  
12 terms of whether we can work something out or not, I don't  
13 know, this goes back to what Mr. Red Cloud was saying before  
14 as well, we're not here trying to convince or lobby people.  
15 If there is a concern or opposition to this, one of the great  
16 things about this process, everybody can make their voice  
17 known. The decision maker is going to decide it at the end of  
18 the day.

19 I don't know how it's going to come out, but  
20 there's a fundamental issue here in terms of whether we try  
21 to work something out or whether we fight about it. And I  
22 kind of look at it as analogous to an out-of-court  
23 settlement. And if we are able to work those kinds of things  
24 out, we need to be able to work them out. In the discussions  
25 I've had, frankly, with folks who are interested in some of

1 these issues, I find it very difficult to see how far, in a  
 2 political environment of opposition we're going to be able to  
 3 work something out.  
 4 And I don't say that as somebody who's trying to  
 5 change anybody's mind or press the issue, I'm just talking  
 6 about practical realities. If we're going to work something  
 7 out, we need to sit down and try to work something out. If  
 8 we want to just use the existing Programmatic Agreement and  
 9 Memorandum of Understanding or Memorandum of Agreement  
 10 framework, that's fine. If you want to go beyond that,  
 11 that's fine. Or if you want to just stay in direct  
 12 opposition and not participate in it, those are decisions we  
 13 can't control.

14 We'll work with you on any one of those levels  
 15 but it's -- not something that we control. But I do think  
 16 folks need to understand that if we're in a position of  
 17 opposition, it's awful hard for Tribal negotiators to work out  
 18 a deal if the direction they have is one of simply  
 19 opposition.

20 So that's a call you need to make, just from a  
 21 political reality standpoint, as much as I would like to enter  
 22 into these agreements, and frankly as much as I think some  
 23 other folks would like to sit down and negotiate them with us,  
 24 they are not going to do that over the objections of the  
 25 people they represent, and that's you. So that's your call,

1 and we'll respect it however you want to approach it, but  
 2 that's the political reality.  
 3 MR. TERRY GRAY: For the record maybe you could  
 4 agree or disagree, but I'm going to do a follow-up request on  
 5 what Francis is saying in regards to the draft EIS, under  
 6 Volume IV, Page 7-6, under the Board's conditioning power, and  
 7 this is for you, Federal agencies, and what Francis was  
 8 addressing. It says, The Board has authority to impose  
 9 conditions to mitigate potential areas of impact.

10 On those conditions I, as I guess cultural  
 11 resource person for the Rosebud Sioux Tribe, am officially  
 12 requesting for STB to issue a conditioning on the permit on  
 13 the basis that the Tribes have the easements, Federal and non  
 14 property rights; do you understand what I -- through the  
 15 Federal right-of-way, the easements.

16 He's applying for a permit to go through the  
 17 Federal. You have the authority to put conditions on the  
 18 permit, and we're talking about -- you're the lead agency.  
 19 You can recommend. Recommendations is a condition of this  
 20 EIS and --

21 MR. STEVE THORNHILL: You're saying of the whole  
 22 project, condition on the whole project, both private and  
 23 public lands.

24 MR. TERRY GRAY: Federal and private and -- well,  
 25 I was hoping he stuck around, because I wanted to see if he

1 would disagree, because under 7.5, negotiated agreements, he  
 2 talked about maybe granting Tribes easements, but I didn't  
 3 catch him in time. He's gone now.

4 MS. CLAIR GREEN: Kevin is probably going to  
 5 miss his plane. He was trying to make a plane, to catch it,  
 6 and he had to drive a distance to do so, and so he asked me  
 7 to apologize to everyone for having to leave in such a  
 8 hurry.

9 MR. TERRY GRAY: What time do we have?

10 MS. CLAIR GREEN: We have to be out of this room  
 11 at 4:00 because of bingo tonight. So did you want to try to  
 12 rap it up for today, is that what I saw?

13 MS. VICTORIA RUTSON: We need to find out about  
 14 tomorrow. Could I ask please for a show of hands as to who's  
 15 going to be here tomorrow, because we do have some unfinished  
 16 things.

17 (Show of hands.)

18 Okay, thank you very much. Then we will be back  
 19 here tomorrow.

20 MS. VICTORIA RUTSON: Should we say what time?

21 MS. CLAIR GREEN: At 9:00 o'clock tomorrow, here  
 22 in this room. Did we want to keep going for another 20  
 23 minutes or not?

24 MS. VICTORIA RUTSON: Do we need a closing  
 25 prayer?

1 MR. TERRY GRAY: Well, I think since we're  
 2 towards the end, I would like for us to come back tomorrow  
 3 fresh, but I want Dan -- now he's headed out -- to give an  
 4 overview of that. He's hiding. Maybe we should remember, we  
 5 discussed about the army corps doing their own study. Shall  
 6 we hear about that, since we're playing truth or dare?

7 MR. DAVID VADER: I am truly pleased to be here,  
 8 in contrast to maybe some comments that have been made, and  
 9 with your permission I would like to speak to you a little bit  
 10 about the role of the Army Corps of Engineers in the process  
 11 of the permit Application submitted by DM&E Railroad.  
 12 Sometimes it appears that the Army Corps of Engineers is  
 13 everywhere, and in fact the role that Congress has given us  
 14 the responsibility that we have as a Federal agency, we are,  
 15 in fact, everywhere where there are proposed projects, where  
 16 it may impact the waters of the United States.

17 In the Application of the railroad through the  
 18 Surface Transportation Board for the permit, the Army Corps  
 19 of Engineers is playing two rolls. First of all we are a  
 20 cooperating agency with the Surface Transportation Board in  
 21 the preparation of the Draft Environmental Impact Statement.

22 We are a cooperating agency because, in fact, we  
 23 are a landowner where the railroad would cross, specifically  
 24 on the Missouri River, where the bridge crossing currently  
 25 exists, and where they would either have to modify the

1 existing or construct a new bridge.

2 So as a land management agency we have a specific  
3 role and a specific interest in the Draft Environmental Impact  
4 Statement. In addition to that we also have a responsibility  
5 as a permitting agency. We are also a regulator, and we have  
6 a permit that is required by the railroad before they could  
7 begin to construct.

8 Congress has assigned the responsibility of  
9 protection of the nations waterways, both navigable waterways  
10 and bodies of water, such as wetlands, to the Army Corps of  
11 Engineers.

12 Before anyone can place fill material or cause  
13 sediment to be injected into the waterways, they have to get  
14 their plans approved by the Army Corps of Engineers, and we  
15 would have to issue a permit before that activity could take  
16 place. Right now as a cooperating agency we are also  
17 reviewing the Draft Environmental Impact Statement.

18 In a separate and totally independent role the  
19 Army Corps of Engineers is also evaluating the Application for  
20 a 404 permit for the proposed project. The Application for  
21 the 404 permit has recently been distributed. There is a  
22 public notice that went out on the 29th of September  
23 indicating that a permit had been applied for. There is a  
24 comment period associated with that that, in fact, by the  
25 announcement of the public notice closed today.

1 However, it's my understanding that a revised  
2 public notice is being published and the comment period will  
3 be extended to the 5th of January. The Corps of Engineers  
4 will use the final Environmental Impact Statement, as well as  
5 the record of decision that's prepared, as the basis for  
6 deciding whether or not we are going to issue a permit.

7 We are neither a proponent nor are we an  
8 opponent of the project. We look at all reasonable and  
9 foreseeable impacts, and based on the impacts, and based on  
10 public interest, we will decide and the decision rests with  
11 the Commander of the Omaha District of the Corps of Engineers  
12 as to whether or not the Army Corps will issue a permit for  
13 the proposed railroad.

14 Now there's been much talk about the volume, the  
15 number of volumes, and I think the height and weight of the  
16 Draft Environmental Impact Statement, the permit Application,  
17 the information contained in that probably matches bound for  
18 bound the Draft Environmental Impact Statement. The public,  
19 certainly the Tribes, state agencies, other interested parties  
20 are encouraged to comment on the Application.

21 What I've learned as recently as yesterday  
22 afternoon is that the distribution of that permit, the 404  
23 permit Application, was limited in distribution to primarily  
24 state agencies, other Federal agencies, as well as public  
25 libraries located along the proposed route, where the public,

1 interested parties, or anyone else could review the permit  
2 Application.

3 We hope that at this point that that provides  
4 adequate access, but I believe that there was also a postcard  
5 that was mailed out for those who would request an individual  
6 copy for review. If there's anything else from the Surface  
7 Transportation Board or Burns and McDonnell, the contractor,  
8 that would like to add on this?

9 MS. VICTORIA RUTSON: 404 is your job.

10 MR. DAVID VADER: As Vicki said, the 404 permit  
11 is our job. It's separate and independent of the  
12 Environmental Impact Statement. We will have to decide  
13 whether or not we are going to issue a permit. It's one of  
14 many permits that is required before this project can go  
15 forward. I don't think that there is anything in terms of a  
16 done deal on this proposed project. There's a great deal of  
17 work that is required by the Federal agencies. There's a  
18 great deal of responsibility for us to disclose and provide  
19 information to the public to comment before any decision is  
20 made. If there are any questions I would be more than happy  
21 to answer them here or meet with anyone to talk to them.

22 MR. JEFF CADOTTE: Did you look at this EIS  
23 yourself.

24 MR. DAVID VADER: We looked at the EIS and I  
25 think the decision was made that rather than the Corps of

1 Engineers doing a separate EIS, that we worked with the  
2 Surface Transportation Board to make sure that certain issues  
3 were covered, and covered in depth, so that we would have  
4 enough information to use that EIS for our decision, rather  
5 than two agencies preparing two separate EIS's.

6 MR. JEFF CADOTTE: If you look at all the impacts  
7 that it had, all the impacts, okay, they were all negative,  
8 right, except for about six out of B and C.

9 MR. DAVID VADER: I can't speak on that, I would  
10 have to look --

11 MR. JEFF CADOTTE: That's why I asked you. You  
12 just got done telling me that you looked.

13 MR. DAVID VADER: Well, the people in our  
14 regulatory program that have the responsibility of reviewing  
15 it to make sure it's adequate for a permit.

16 MR. JEFF CADOTTE: So who has to -- can all the  
17 Tribes ask you guys do your own EIS.

18 MR. DAVID VADER: I think you could ask, but I  
19 think the decision -- probably the response that would come  
20 forward is that we're working on the EIS as a cooperating  
21 agency, to make sure that it's adequate for us to use for  
22 decision making.

23 MR. JEFF CADOTTE: But still there's all kinds of  
24 impact in it.

25 MR. DAVID VADER: That doesn't mean that we don't

1 look at that, and that we don't use that to make a decision.  
 2 We do, in fact, look at the impacts from -- everything from  
 3 impacts to the wetlands to air quality to cultural resources.  
 4 We look at all of those when we make a determination to issue  
 5 a permit.

6 MR. JEFF CADOTTE: How many places where their  
 7 railroad is going to go that you guys are involved in it.

8 MR. DAVID VADER: Just to give you some idea of  
 9 the number of stream crossings there are.

10 MR. JEFF CADOTTE: Six.

11 MR. DAVID VADER: There are probably one  
 12 thousand stream crossings, everything from the Missouri River  
 13 and James River to very small tributaries or creeks. There  
 14 are many, many acres of wetlands that we would look at that  
 15 would be impacted by this, and all of these things would have  
 16 to be addressed in a mitigation plan. They would have to be  
 17 considered and there would have to be something proposed in  
 18 advance before any decision would be made on the permit. We  
 19 would not issue a permit subject to coming up with a plan to  
 20 address those.

21 MR. JEFF CADOTTE: Because I'm saying I've been  
 22 meeting with you guys, Corps of Engineers, for quite a while  
 23 now and I think you know that. And everything you guys say  
 24 you are going to do, I never seen none of you guys do any of  
 25 that, and I think you know that, too.

1 MR. DAVID VADER: Well, we try pretty hard to say  
 2 that.

3 MR. JEFF CADOTTE: You say you're going to try  
 4 pretty hard, but you guys never do anything, and I think you  
 5 know what I'm talking about. Back home, too, I never seen  
 6 anything done yet, so that's why I was asking. If there's  
 7 that many stream crossings and everything and you guys -- why  
 8 can't you do your own EIS instead of going off this, because  
 9 of all the impacts that it has in this.

10 MR. DAVID VADER: Well, part of that would be  
 11 cost and part of that would be something I would like the  
 12 Surface Transportation Board to talk about if they would.

13 MR. JEFF CADOTTE: But you said you guys have a  
 14 lot of money though.

15 MS. VICTORIA RUTSON: The reason why we're all  
 16 working together is because the law essentially says that if  
 17 we're all required to issue permits, whether we grant or deny  
 18 those permits on the same project, we all need to work  
 19 together. It makes it a little more complicated, because as  
 20 you know anytime you have to do one thing working with other  
 21 people, it gets a little bit more complicated.

22 As a woman I can say if I want to give a party,  
 23 if I want to do it by myself it's easy. If I have to work  
 24 with five other people so we agree on what food to have and  
 25 who we invite, it's complicated. So we don't really

1 necessarily feel it's easiest to work altogether, but it's  
 2 better for the process. It's better I think for the public,  
 3 because all of us have -- can you imagine six of these  
 4 documents to review? That would be so burdensome and so  
 5 unfair to ask your comments on that mountain of material.  
 6 It's better that we all work together, I think.

7 MR. JEFF CADOTTE: Well, such little time you  
 8 give all these, time to do that all these thirteen volumes.

9 MS. VICTORIA RUTSON: Imagine if there was 50  
 10 documents.

11 MR. JEFF CADOTTE: These guys should be allowed  
 12 all that time, too, and I think the Corps should do all their  
 13 own EIS because of the impacts.

14 MS. VICTORIA RUTSON: Thank you for your  
 15 comment. I don't know, we've had a lot of requests for  
 16 additional time, and the Board will have to respond to those  
 17 requests.

18 MR. JEFF CADOTTE: I just wanted the Corps of  
 19 Engineers to do their own EIS, because I know how the Corps  
 20 works.

21 MS. VICTORIA RUTSON: We have to wrap up, Scott.  
 22 We have to get out of here.

23 MR. SCOTT JONES: Just one brief, Vicki. Will  
 24 the Corps, as well as the other cooperating agencies, agree  
 25 that it's important that we expedite receiving the additional

1 404 information? Will you agree that that is an important  
 2 that we have an opportunity to review that? And  
 3 notwithstanding the streamlined process, that there is still a  
 4 mountain of paper. It's just that we haven't got access to  
 5 it, Vicki, and that's all I wanted to say.

6 MR. FRANCIS BROWN: Can I for one second?

7 MS. VICTORIA RUTSON: This is it, okay?

8 MR. FRANCIS BROWN: When the guy that was here,  
 9 the president of the railroad company was saying something  
 10 about they would want their own easement, but I think the  
 11 thing that you, as Federal agents, has to consider is that  
 12 there is going to be and there are cultural resources on  
 13 there, and we are entrusted to protect those, that our  
 14 ancestors had. And so that's why I'm saying that we should be  
 15 included in the easement, because that's our property that  
 16 either they are going to destroy or have no care for. But we  
 17 want an easement so that we can care and protect that  
 18 property. Thank you.

19 MS. MARIE RANDALL: Can you hear me?  
 20 (Speaking in Lakota.)

21 I thank all of you for coming and listening to  
 22 us and try to understand us as who we are and what we're  
 23 trying to make you understand and work with us as who we are,  
 24 as Lakota Oyaic. And the only thing you're going to recognize  
 25 us, there's only four numbers, remember that, under four

1 numbers you have to recognize all of us, all the Great Sioux  
2 Nation tribe, I mean Oyate.

3 I don't think like that tribe, because tribe is  
4 all over, you know, but the Oyate of the Great Sioux Nation,  
5 and the only numbers I'm going to use today, that you have  
6 been using numbers, everything, policies, regulations, but  
7 there's only four numbers I'm going to use today, and I hope  
8 you recognize us under that number, and believe in us, 1868.  
9 We have every benefit entitlement owed to us by the United  
10 States or the foreign people that came on to our land.

11 Those are numbers that we stand under, and we  
12 need our benefits and our entitlements. And I want you to  
13 understand they are still ours. We haven't changed. We  
14 haven't amended or nothing on those numbers. So remember  
15 when you try and study that 1868 treaty, the number 1868, and  
16 we still have our benefits and entitlements that you owe us  
17 to Lakota.

18 (Closing prayer in Lakota at this time.)

19 MS. CLAIR GREEN: Thank you very much. We will  
20 adjourn now and be back here in the morning at 9:00 o'clock  
21 for those of you that wish to join us.

22 (End of proceedings for November 29, 2000.)

23

24

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POWDER RIVER BASIN EXPANSION PROJECT

DRAFT ENVIRONMENTAL IMPACT STATEMENT

Tribal CONSULTATION MEETING

\*\*\*\*\*

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NOVEMBER 28-30, 2000

ROSEBUD, SOUTH DAKOTA

1 to help us write that, which did happen.

2 Terry Gray from Rosebud was very active in the  
3 Identification Plan, which is a part of the Programmatic  
4 Agreement, and the comments that came back on the draft  
5 document, which was sent out earlier in the fall, or I guess  
6 at the end of the summer, were very few, but those that came  
7 in were quite positive in talking about the inclusion of  
8 native peoples and Tribes. And the actual operation of these  
9 documents, I guess I want to say, to talk about them, I would  
10 like to introduce Dan Shinn from Burns & McDonnell, and then  
11 Terry Gray will also be helping him, I believe at some point.

12 MR. DAN SHINN: Good morning --

13 MS. CLAIRE GREEN: I'm sorry, I wanted to say one  
14 more thing. We had planned to go up until noon time today.  
15 There is snow on the way, and if at all possible we would like  
16 to keep to that schedule, because I know that there are people  
17 here who have to drive a distance to try to get home. I know  
18 there are also still people who would like to have some  
19 general comments.

20 So what I would ask is if we could hold the  
21 general comments until the last bit of this morning, so that  
22 we can get through this document, it might make everyone able  
23 to leave at noon so that we can travel a bit more safely.

24 MR. DAN SHINN: Again, thank you, Claire. The  
25 Programmatic Agreement if you're looking at it there, I want

1 Thursday, November 30, 2000.

2 MS. CLAIRE GREEN: I would like to say good  
3 morning to everybody on this third and final day. We would  
4 like to start this morning talking about the Programmatic  
5 Agreement, which is a part of the Draft EIS, and I know that  
6 several people here have come with specific comments on that  
7 document.

8 Shall we start with a prayer; who would do that?

9 MR. TERRY GRAY: A moment a silence for those  
10 that have left us.

11 (Moment of silence observed.)

12 MS. CLAIRE GREEN: Thank you very much. We would  
13 like to start this morning talking about the Programmatic  
14 Agreement, which is a part of the draft EIS. And there are a  
15 couple people who have come to this meeting who would like to  
16 make some comments on that document. I have some copies of it  
17 up here. I only have about 20 of them, which I'll pass out so  
18 that everyone could have a copy in front of them.

19 And to do this Programmatic Agreement was a  
20 document under Section 106 of the National Historic  
21 Preservation Act, and when the Surface Transportation Board  
22 started working on the draft EIS we held some consultation  
23 meetings to talk about the Programmatic Agreement, and to ask  
24 the Tribes and Tribal representatives and some Indian groups

1 to emphasize again is a draft. Again, you have all the  
2 opportunity in the world to comment on this, and have your  
3 comments included in it.

4 It has been a draft, at least on my computer,  
5 probably sixteen or seventeen times at this point. We keep  
6 changing it and revising it. And those are based on comments  
7 that have come in, not only from Native Americans and their  
8 comments on it, but also from the Federal agencies and also  
9 from the Advisory Council on Historic Preservation.

10 All these people have been involved with it. We  
11 put out an initial draft, that was a very sketchy, just to get  
12 the comments started, and it certainly did all of that. It  
13 got comments really started when we did that. And it has  
14 really evolved a long way since that time.

15 When we first went to meet with the Medicine  
16 Wheel Coalition, Francis Brown took a quick look at it and  
17 decided we were really wrong and made some suggestions, and  
18 those suggestions also were included. There are signatory  
19 areas for the Tribes. There are signatory areas for Tribal  
20 groups on this Programmatic Agreement.

21 The Identification Plan, as you've heard  
22 mentioned, is an integral part of the Programmatic Agreement.  
23 This was suggested by not only the Native Americans that we  
24 have a definite plan set down that had more detail to it than  
25 a Programmatic Agreement can contain, and it was also

1 suggested by the Federal agencies who felt that it also  
2 needed to be there, especially the Advisory Council.

3 So all of these things came together to produce  
4 what you have in front of you now. It is designed for  
5 cultural resources. It is not designed for other things. It  
6 is designed for cultural resources, and the Section 106  
7 process. It outlines that process and it outlines how we go  
8 about doing things within that process.

9 It covers everything from how the archeologists  
10 will act in the field. It covers having Native American  
11 monitors with us when we go to the field. That is a  
12 requirement. You have heard that there are some surveys that  
13 have been done in some areas already. Every one of those  
14 surveys have a Native American monitor present when they were  
15 done. There have been no surveys at all by any archeologist  
16 on this line, or on this project, that did not have a Native  
17 American monitor present.

18 The ID plan covers curation. It covers  
19 inadvertent discoveries. It covers what we do with possible  
20 burials if they are discovered during the process. It has  
21 many, many parts. We welcome your comments on this. I'm not  
22 sure how you want to do this today. I don't know how much of  
23 you have read it. And if you want me to go through it bit by  
24 bit, we certainly will, but we are here for your comments. If  
25 you have comments concerning this we would love to hear you.

1 Thank you.

2 MR. ALLEN FLYING BY: The question is language  
3 involved, the language involved?

4 MR. DAN SHINN: Say again?

5 MR. ALLEN FLYING BY: Language that's involved.

6 MR. DAN SHINN: The language involved in the  
7 Programmatic Agreement or --

8 MR. ALLEN FLYING BY: You always say cultural, to  
9 us culture is secondary to language.

10 MR. DAN SHINN: Okay, in this case what we are  
11 looking at as far as from the archeological side is for the  
12 physical remains of something, okay. However we realized very  
13 early through consultations with the folks that we can not  
14 recognize everything that's out there. That's why the Native  
15 American monitors were along, so that other things that we can  
16 not physically see as archeologist, and we readily admit that,  
17 could be talked about in the reports, at least to a minimal,  
18 not by any specifics at all.

19 And that's been the case all along, and we  
20 understand that. But at least to point out that there may be  
21 something here that we need to be concerned about. Those may  
22 lead to down the road, as is pointed out in the MOA, the  
23 graphic studies that would go further to protecting those  
24 types of sites.

25 Does that answer your question? The language

1 itself is not included -- I'm sorry, it's not a part of  
2 archeology in this sense.

3 MR. ALLEN FLYING BY: It's the number one thing  
4 that you're forgetting because without language you can't have  
5 culture. Without math you can't have science. Language is  
6 the first deal. Language is the culture. If you don't have  
7 the language in there, then culture doesn't have any  
8 relevance.

9 You can talk about culture in different  
10 languages, but the real culture that we talk about has  
11 language in it that's -- I think that's very important,  
12 because all aspects of what you're doing is language, getting  
13 the language.

14 MR. DAN SHINN: Sir, I understand where you're  
15 coming from, I think, as far as the language is a barrier and  
16 the languages that occur in culture. Maybe that -- I don't  
17 know exactly where that would be covered. It would probably  
18 be something that would be looked at in the ethnographic  
19 studies, because we can not do ethnographic studies without  
20 language.

21 I just really don't -- I deal with the physical  
22 remains of a culture. I do not deal with the languages of the  
23 culture.

24 MR. FLYING BY: You can't speak to the plan, the  
25 plan can't speak to them, they don't understand.

1 MR. DAN SHINN: I agree.

2 MR. ALVIN GRASSROPE: Excuse me, I believe what  
3 he's referring to is the Lakota language is somewhat  
4 conceptual, as where the English language is concrete. So  
5 where is our view, our philosophy behind the discoveries that  
6 are made, when our view is conceptual, and where the dominant  
7 society is concrete; that's what we're trying to get at.  
8 There's got to be a differentiation in there to provide the  
9 Lakota meaning to enhance itself on all the findings.

10 MR. DAN SHINN: I think that's coming from the  
11 Native American monitors who are contributing to the reports  
12 that are being written on this, so at least that's the best I  
13 know how to answer the question, is that the Native American  
14 monitors are contributing. Maybe Terry can add something to  
15 that.

16 MR. TERRY GRAY: I guess in the conceptual design  
17 of monitoring in regards to culture is based off of or the  
18 concept, if I remember right, came from Bulletin 38, right.

19 MR. DAN SHINN: That's correct.

20 MR. TERRY GRAY: Which depending on which  
21 historic site and which Tribes want to take an active role in  
22 participating in what levels of protection that site is going  
23 to be, and how that tribe utilized elders to substantiate the  
24 significance of the site, which is reflected back to Bulletin  
25 38, which goes back to oral historical perspective.

1 MR. FLYING BY: Let me explain why I said that,  
2 because if you know the language and all these places that are  
3 involved, whether they are burial sites or they are part of  
4 the natural things that are there, you listen. In Lakota they  
5 are saying -- (Speaking in Lakota.)

6 Do you know what they said? That's what's  
7 missing. (Speaking in Lakota.)

8 That's not in here. Maybe Terry can answer that.

9 MR. DAN SHINN: I'm going to attempt to answer  
10 for what Terry might know and not know about what we're  
11 doing. As far as archeologists are concerned, again I'm very  
12 honest with you. We deal with the physical, that's why the  
13 Native American monitors are there. If they raise a question  
14 about a site, they don't have to tell us anything. They don't  
15 have to go anywhere with it.

16 If they raise a question about a site, in our  
17 evaluation of a site, then we leave the site at this point.  
18 At the point we are within this process at this time, as you  
19 know, evaluated until such time as the elders have had a  
20 chance to look at this and evaluate that site for its  
21 significance under a traditional cultural property. Is that  
22 answering your question as to how we're looking at some of  
23 these things?

24 MR. TERRY GRAY: I need to have you, if you want  
25 to speak, please come to a microphone, please, so the recorder

1 can get what you're trying to say.

2 MR. CALVIN JONES, SR: Calvin Jones, Sr.  
3 Everything that is being said in the last few days, probably  
4 some other consultation meetings that you've had, this  
5 information, is any of this sent back to say Indian Tribes or  
6 anybody in particular here where we could take and review what  
7 was said at different times in this meeting, too.

8 MR. TERRY GRAY: Yeah.

9 MR. CALVIN JONES, SR: So it's actually shared  
10 then?

11 MR. TERRY GRAY: Yes.

12 MR. DAN SHINN: As will all of the reports.  
13 That's laid down in the Programmatic Agreement.

14 MR. CALVIN JONES, SR: Like Terry, do you get it  
15 or does the Tribal chairman get it?

16 MR. TERRY GRAY: There's two copies, one comes  
17 for the chairman, which Freemont usually gets the chairman's,  
18 but the original, because it's a historical record, it goes  
19 into archives for management.

20 MR. CALVIN JONES, SR: Are copies made of that  
21 where we can take review?

22 MR. TERRY GRAY: Oh, yes, it's from the research  
23 board.

24 MR. FREEMONT FALLIS: Freemont Fallis, Sicangu  
25 Treaty. These comments that you're talking about, how

1 effective are these comments going to be?

2 You know, I was involved with a buffalo  
3 management EIS in the Yellowstone National Park for four  
4 years, and in the end process our comments were ignored and  
5 they listened to the State of Montana, more to the Livestock  
6 Growers Association than the Indian Tribes.

7 So is this what's going to happen here again,  
8 because mostly -- the only thing that you people are after,  
9 whoever the contractors are, all you're after is the  
10 archeologist's signature. Once you get that, our cultural  
11 resource issues will be ignored.

12 That's one of the things that when we met in  
13 Newcastle, Wyoming on the Black Hills forestry, we had to  
14 explain to the BLM on our cultural resource issues, and in  
15 the end the gentleman decided to put the archeological report  
16 on hold for now, and he stated that they may have to do  
17 another cultural survey.

18 So I wish that you people really listen to our  
19 needs as we give you our comments and that we greatly  
20 appreciate it. Thank you.

21 MR. DAN SHINN: Maybe it would help if I do a  
22 quick run-through of how these reports are going to be  
23 handled, and what kind of review process they are going to go  
24 under, according to the Programmatic Agreement.

25 The Programmatic Agreement, once these surveys

1 are complete, again, like I said, there will be a Native  
2 American with all of the surveys. The reports are then  
3 written to include the monitors comments, anyplace that we  
4 can, not through physical evidence, determine its eligibility,  
5 but the monitor has commented that there may be something  
6 there, or there's something going on, that site will remain  
7 unevaluated until further studies are done.

8 Once those reports are written then they go to  
9 the Federal agencies and the Tribes at the same time for  
10 review and comment. Those comments then come back to the STB  
11 and are incorporated into the report before it ever goes to a  
12 SHPO. At that point it goes to a SHPO. They have a choice of  
13 either concurring or disagreeing, that's their choice. You,  
14 along with the Federal agencies, are going to determine  
15 eligibility, not the SHPO, okay?

16 Then when they come back, if there's additional  
17 work is required, the additional work will be done at that  
18 point to determine eligibility on those sites that have  
19 remained unevaluated. That is the process, and how it works  
20 to get to that point.

21 Once the site has been either determined eligible  
22 or not eligible, and that's the point, the sticking point  
23 usually is whether it's eligible or not eligible, and it makes  
24 a difference whether you're on Federal land or private land  
25 again. But if a site is eligible, then there is a requirement

1 that treatment plans, which are plans about what are we going  
2 to do with it, is it going to be avoided, is it going to be  
3 mitigated, or are there other things that need to be done, is  
4 there additional work that has to be done to record, fully  
5 record this site, fully take care of this site, will have to  
6 be prepared.

7 Those two are reviewed by Federal agencies and  
8 the Indian Tribes before they ever go to the SHPO again.  
9 Then the state historic preservation office will review them.  
10 They can concur or they don't, and the Advisory Council on  
11 Historic Preservation also reviews that treatment plan, and  
12 either approves or disapproves of it.

13 So where you're at as far as where are the  
14 Native Americans included in this process, is right along  
15 with the Federal agencies at the same time they get it you  
16 get it.

17 And by the way, I would like to reiterate that  
18 any surveys that you here have been done, have been done  
19 according to what's in this plan right now. And as it's been  
20 revised, those surveys have been revised to make sure they are  
21 staying within this plan.

22 MR. ALVIN GRASSROPE: Alvin Grassrope, Lower  
23 Brule. I would like to give an example of what I spoke on  
24 earlier, on the conceptual of the Lakota way and the concrete  
25 of the English way. Okay, we would have, when we come across

1 some archeological finds, some human remains or whatever, we  
2 would use the term *oyu' ha*, which would mean belonging to the  
3 Lakota Oyate.

4 In the concrete view, English view, what you  
5 have just stated is that does it belong to the government or  
6 to an individual or like that; that's what I meant by concrete  
7 or conceptual, where it belongs to the whole or to an  
8 individual. Thank you.

9 MS. CHARMAINE WHITE FACE: My name is Charmaine  
10 White Face. I am media coordinator for the Black Hills Sioux  
11 Nation Treaty. My -- the reason I'm giving these comments are  
12 for the record, but they are also to help you understand a  
13 little bit about the difficulty we have with this Programmatic  
14 Agreement and with the Memorandum of Agreement that will be  
15 coming down, or that you have written and is in the draft.

16 I have been thinking about this I guess since  
17 this meeting started, because again it's trying to explain a  
18 protocol. When the United States sends delegates to a foreign  
19 country, ambassadors, embassy workers, they have to go through  
20 a certain kind of training to understand the protocol of the  
21 country that they are in, and this is not necessarily the  
22 cultural -- knowing their whole culture, the language,  
23 religion, music, whatever, but it is the protocol with the  
24 governments; who do they speak to, how do they address that  
25 person, who do they talk to.

1 And I think one of the reasons why we always  
2 have a difficulty when we have these kinds of meetings is  
3 because of the protocol issue and the lack of education of  
4 American people about Native American people, groups of  
5 people. On here, and Mr. Shinn has said that the Tribes  
6 would be considered on the same level as a Federal agency.

7 And I see first, you know, the signatures for the  
8 Federal agencies, and then signatures for the signatory  
9 Tribes, the chairman of all the signatory Tribes, and then it  
10 has signatory Tribal organizations, the president of the  
11 Medicine Wheel Alliance, the president of the Medicine Wheel  
12 Coalition for Sacred Sights, chairman of Minnesota Indian  
13 Affairs Council, president of the Grey Eagle Society, and then  
14 it has president of the Black Hills Sioux Nation Council.

15 Now all of these chairman here that are from the  
16 Sioux Tribes Oglala, Rosebud, all of these chairman are sort  
17 of like they are ultimately answerable to the treaty people.

18 And this is where we get into the difference between IRA.  
19 You've heard the initials, that's an IRA. That's a treaty.  
20 IRA refers to the 1934 Indian Reorganization Act. When the  
21 Tribal council forms, governments were created and these  
22 councils and the Indian Reorganization Act are Federal law.  
23 These councils were created by an United States Federal law.

24 Where we come from we also know, we come from  
25 another nation. We have dual citizenship. We have

1 citizenship within the Great Sioux Nation, within the Oceti  
2 Sakowin. We also have citizenship within the United States.  
3 These chairmen, the chairmen from the Tribal councils from  
4 Rosebud Sioux Tribe or Cheyenne River Sioux Tribe or Oglala  
5 Sioux Tribe, if their councils give approval for this  
6 Programmatic Agreement, and then they sign it, you know,  
7 supposedly then they are on the same level as the Federal  
8 agency because they are also created by Federal agencies.  
9 Federal agencies such as yours are created by  
10 Federal law. There are reasons for this. One of reasons, I  
11 know for example in transportation, and that's the area that  
12 I'm more familiar with than a lot of them, it seems  
13 incongruous, and I know your Federal transportation laws, and  
14 I also know the lack of -- or how many there are of Tribal  
15 transportation laws.

16 Transportation for the Tribal government has a  
17 stipulation in there that they may be sued. The United  
18 States Congress itself cannot be sued because they have  
19 protection from sovereign immunity. Individual Congressmen  
20 themselves can be sued for unlawful actions.

21 Now the same goes with these IRA Tribal  
22 governments. They cannot be sued as a sovereignty, as a  
23 government, and if they have chartered an organization they  
24 need to put in their charter, and they have done this with  
25 certain organizations, that they can also be sued, which

1 means they can be taken to court.  
 2 The signatures on here of these Tribal chairmen,  
 3 again, I reiterate that these Indian Reorganization Act  
 4 governments were also created by Federal law; however, in  
 5 order that there is a higher power that these Tribal chairmen  
 6 have to answer to, just like there is a higher power Federal  
 7 agencies have to answer to. Federal agencies have to go back  
 8 to the Congress and president.  
 9 These Tribal chairmen ultimately would be  
 10 answerable to the treaty, to the treaty people, to the treaty  
 11 council, and this is what -- where this protocol and one of  
 12 the frustrations that agencies have is because you are not  
 13 taught the proper protocol. You are not taught about the  
 14 treaties. You're not taught that we have dual citizenship.  
 15 We see this as a purposeful, concerted effort to eventually  
 16 eliminate us, and that's why you hear some people talk about  
 17 genocide.  
 18 So in essence, I guess what I'm saying if the  
 19 lawyers are there, the Congress of the United States is here,  
 20 Treaty Great Sioux Nation is here, you have your Federal laws,  
 21 Surface Transportation Board, U.S. Forest Service, all these  
 22 are here, okay, under your Federal law you have created a  
 23 level of government for us that's called the Indian  
 24 Reorganization Act governments; that's these Tribal council  
 25 forms of government, okay.

1 We realize we have to work with this, that this  
 2 is the only people that your government, congress, will  
 3 recognize, even though they created it. And so the IRA  
 4 governments Tribal councils, and so on, some of the Tribes,  
 5 some of the treaty people are included within them because  
 6 it's a vehicle that we can work with the United States, with  
 7 the IRA Tribal councils.  
 8 But what the Congress and Federal agencies  
 9 failed to recognize is that these IRA councilmen, chairmen  
 10 have that dual citizenship, and ultimately they are  
 11 responsible back to the Great Sioux Nation, or to the larger  
 12 treaty organization that is covering a nation.  
 13 We are specifically talking here about the Great  
 14 Sioux Nation of which we all belong, Rosebud, Cheyenne River,  
 15 Lower Brules, Standing Rock, Pine Ridge. These are just the  
 16 West River ones. We have other relatives who live in Canada  
 17 still, all over the United States, who are members of the  
 18 Great Sioux Nation. We have members living throughout the  
 19 world who are members of the Great Sioux Nation.  
 20 So maybe this will help you understand a little  
 21 bit more about the difficulty. We understand, many of us  
 22 understand what we're trying to do here, and we understand  
 23 the procedures and processes that you're talking about. But  
 24 for us first is the proper protocol, and that's why I have  
 25 stated repeatedly that the protocol needs to be answered

1 first, otherwise it's insulting. It's disrespectful to our  
 2 treaty people, who primarily we put in a position, the  
 3 elders. They are not an elected position.  
 4 And like you saw yesterday, when they ask for a  
 5 vote, it was a consensus of all of the people that they asked  
 6 for. So it's not an elected position, and I know that makes  
 7 it difficult because you need one person or two people to  
 8 contact, although we do have Chairman, and Chief Oliver Red  
 9 Cloud was the one that was here.  
 10 So I guess I hope this helps to explain about  
 11 why you're going to have difficulty. Any time you bring a  
 12 Programmatic Agreement, Memorandum of Agreement, or something  
 13 to any of the Tribes, and especially here, the 68 Treaty is  
 14 one of the strongest treaties for who we are. On the  
 15 Internet, if you would look up under the Human Rights  
 16 Commission, the 68 Treaty is also recognized by the United  
 17 Nations Human Rights Commission, Fort Laramie 1868 treaty.  
 18 I want to thank you for being here, and I want  
 19 to thank you, Ms. Rutson, for trying to learn. I know that  
 20 you all have bosses and levels that you have to take this up  
 21 to. We keep on trying to educate you, and hopefully in your  
 22 reports, and hopefully through this record that can be passed  
 23 up to your bosses, we're trying to hit them at the top, too,  
 24 trying to educate them at the top, too. Thank you.  
 25 MS. IMOGENE TAKEN ALIVE: (speaking in Lakota.)

1 My name is Oyate Aki' cita, a woman defender, and  
 2 I'm a generation keeper of my Lakota Oyate, and I built my  
 3 nation because of who I am. As a Lakota woman I carry that  
 4 generation to build my nation on Lakota, and I'm really proud  
 5 to be who I am, because of my ancestors that are fallen before  
 6 me, for the sake of the generation coming, they have given up  
 7 part of the continent to the people that have come to us, and  
 8 they built the Great Sioux Nation. We didn't consider this.  
 9 It was the Wicata that built that Great Sioux  
 10 Nation. Within that Great Sioux Nation that's Oceti Sakowin,  
 11 and there's -- there are names, Indian names and white names  
 12 that we have here within this Great Sioux Nation, and all the  
 13 land that we have shared. Why?  
 14 Our ancestors have laid down, gave up there  
 15 lives so that we can live and continue our generation, and we  
 16 build this nation here. The United States said we'll give you  
 17 a nation with Oceti Sakowin in it. Now why are we all the  
 18 land that we have given up? Why are you trying to come  
 19 through the Great Sioux Nation? You should have some respect  
 20 for us and consider the generation that we're building here  
 21 within this nation. We're a nation, and yet you want to go  
 22 through that again.  
 23 And remember, our ancestors, the whole continent,  
 24 we've been here thousands and thousands of years before  
 25 anybody came here. And they have -- we put them -- we come

1 from -- our grandparents said, You come from Mother Earth, and  
2 you're going to go back to Mother Earth. So what you're  
3 digging up, and what you're walking on and trying to put  
4 things on this land, you're disturbing the spirits of our  
5 people.

6 We're still in mourning for all that have  
7 happened to us. Although we were generous to share, and yet  
8 there are things that happened to the Lakota Nation, Lakota  
9 Oyate that shared, gave up things and they went through  
10 hardships, and still in history, and all I said yesterday  
11 that I want you people to go back and educate your people,  
12 and I gave you four numbers, study that and maybe you wouldn't  
13 disturb this Great Sioux Nation.

14 And I heard a lot of you get up and talk, my  
15 land. It is our land and you call us the poorest people in  
16 the United States. I've heard that. No, we're not poor,  
17 we're a great people. We're the richest people on this world,  
18 but because of generosity one of the valued systems that we  
19 carry through our lives and taught by our ancestors we share,  
20 that's because we care for other human beings.

21 So we're not poor people. We have everything.  
22 It's just the idea that we can live without things. We don't  
23 have to have a lot of things, that isn't -- it's just the body  
24 and the spirit of us people that we have to carry to return  
25 back to the Mother Earth again, and we'll all be -- some of

1 these people are going to go in the grave and you'll be coming  
2 over and digging them up, putting them, placing them  
3 somewhere. No, we don't want that, and that's why we're  
4 saying no.

5 Why are you trying to come through our Great  
6 Sioux Nation again? We have already given you enough. We  
7 gave up a lot so that you can survive on our own land. Your  
8 ancestors came from some homeland to be on our homeland, and  
9 we shared. We cared for them, for their survival. But in  
10 return, it just seemed like they want more and more of what we  
11 have, Great Sioux Nation, and that's why I ask go back in the  
12 1868 treaty books, look for them, study them, that way you  
13 wouldn't have to come back to us and ask it and talk it and  
14 saying we're going to do this. You're going to have this.

15 And every time they talk there's no one that says  
16 -- I've heard no one say this, we're going to give the Lakota  
17 people this much money back, because we're going to use their  
18 land. We're going to get coal hauled from here to some other  
19 part of the continent for their use. No one said because  
20 we're taking this out of the Indian nation territory, we're  
21 going to give it over there. We're going to give you this  
22 much money. We're going to pay for it. We're taking it. I  
23 never heard anyone make that remark here. I've listened.

24 I know it's all going to go back to you people  
25 for your benefit, but under the treaty, 1868 treaty rights

1 for our Lakota Oyate there's benefits, entitlements that  
2 belong to us, and it's going to belong, go on and continue on  
3 the generation that's coming behind us.

4 So please go home and study that book. Just  
5 like you give us all these papers, you said go home and study  
6 that, look at it and study it. I'm going to ask you people  
7 to, and take that 1868 treaty book to the president of the  
8 United States, make him understand, so he wouldn't have to be  
9 sending you people down here to say, We're going to do this.  
10 We're going to take that land. That's my land, deeded land  
11 and all that, you know, that isn't right. The Great Sioux  
12 Nation belongs to the Lakota Oyate and Oceti Sakowin.

13 So thank you very much for coming, and I don't  
14 speak English that well, so I can't explain myself very much,  
15 but I just want you to understand that we believe in the  
16 treaty rights of our people, Lakota Oyate, and we're going to  
17 continue to believe who we are. And there's a word that's  
18 always being said to a sovereign nation, we're a nation. Who  
19 created that nation? When everybody was fighting for this  
20 land, among the people that came on to our homeland, they  
21 created this nation for the Lakota Oyate, and I think we're  
22 entitled to that nation, and the law of the land.

23 Remember, we're all sitting here, but once we  
24 leave this world we're going to go back to Mother Earth.  
25 Mother Earth is who we are built with. So if you tear the

1 grounds or the minerals that have been taken from the nation,  
2 you know, you're tearing up our people, no matter where you  
3 go. It isn't just those little grave sites you see here and  
4 there, no. The whole continent at one time had people like us  
5 living and they went in the ground. So you're tearing  
6 everybody up, not only the Lakota Oyate but some of your  
7 people, too.

8 You tear up to go through and make money, and we  
9 don't believe in money. Look at all the gold that has been  
10 taken from our nation. We didn't get nothing out of it, but  
11 we don't care, just so we save the sacred sites where we can  
12 go back and do our prayers and whatever for our nation.

13 So be sure and find that book. You have good  
14 libraries, maybe you can make it into booklets like you passed  
15 around to us and say, hey, study this. Put your signature?  
16 No, we can't do that anymore. So I think look for that book,  
17 1868 treaty book, and study it and you'll know what we believe  
18 and who we are. Thank you very much.

19 (Speaking in Lakota.)

20 MS. MARY JANE TIOKASIN: Wendy, I have a comment  
21 to make about this paper. Do I have to stand up there? Yeah,  
22 I was looking at this paper and it reminded me of my great,  
23 great father-in-law, John Tiokasin, councilman for Ft. Yates,  
24 Standing Rock. They went to Washington to find out -- well,  
25 these are the old, old councilmen, you know, the good ones

1 that we used to have and -- Mary Jane Tiokasin from Standing  
2 Rock. They always say behave. I guess I have to.  
3 Anyway, on these treaties that they took, they  
4 had these Indians sign, you know, the Lakota people sign.  
5 They found out that what they had agreed to, that's if they  
6 agreed, nobody knows. They took their thumbprint and all  
7 these again were witnesses, okay. So that group went to  
8 Washington, D.C. because they had heard that they took that  
9 treaty. They cut out what they wanted and made it the way it  
10 is today. The original treaty they cut out and put in their  
11 words.  
12 And these councilmen that went to Washington,  
13 D.C., well, while you were all youngsters yet, I don't think  
14 anybody was born then, but these gentlemen went to Washington,  
15 D.C.. They wanted to find out why they had cut this treaty,  
16 took out some of the words and put in their words after they  
17 got these chiefs to sign. Well, they treated them real well.  
18 They dined them and talked to them, and then they gave them a  
19 big banquet so they could go back to their nations, and in  
20 that food was poison. They poisoned these Lakota people.  
21 So they -- my great, great father-in-law at Fort  
22 Yates, he's buried in Fort Yates now, but they don't know who  
23 did this to them. They poisoned them at that banquet. They  
24 died. So this paper here reminds me of the signature at the  
25 signing of the treaties, because you have all the chairmen

1 Turtle Mountain, Three Affiliated, and there has to be a  
2 witness to these signatures.  
3 Because on our tribe, in the west end of the  
4 Standing Rock, South Dakota side, there's a ranch called the  
5 Shambow Ranch, and that was owned by non Indians, and the  
6 tribe was going to buy it, but the acting chairman that's on  
7 state -- part of it is on state land taxable, and here this  
8 acting chairman must have been in a hurry. So when these  
9 people brought this paper, he signed away the sovereignty for  
10 that side of the reservation.  
11 So when we got on his case, we jumped on it  
12 right away, and he said that that wasn't the paper that he  
13 signed. So there's another acting chairman that brought this  
14 paper back, and it was worded different. So in between that  
15 signature of the acting chairman when the chairman wasn't  
16 there, see in any organization whenever you have someone  
17 that's taking your place as acting, the law must stand on how  
18 they sign it.  
19 So that's why it's very important, but we got  
20 this thing straightened out. We didn't sign -- he didn't sign  
21 away sovereignty for the South Dakota side of Standing Rock,  
22 but these signatures have to be witnessed by an honorable  
23 person, or someone as trustworthy because, you know, just this  
24 chairman of Standing Rock Sioux Tribe, he's gone a lot, so  
25 there has to be something else underneath. It has to be

1 witnessed by someone that knows that he's signing for the  
2 truth, in any document, not only this.  
3 But this reminds me of them treaties that the  
4 chiefs signed. So that's why I think that everything should  
5 be -- these signatures, anybody could sign these. Acting  
6 chairman could say, I'll sign it, and it will go through just  
7 like that, without any corrections. I think they have to look  
8 at it because there's words in there, too.  
9 Like I told Wendy about the Native American  
10 Sioux Tribes that signed, I just wrote her a little note and  
11 told her, that's not right. Those Native American Tribes  
12 that have signed, that's the way it should be written, and  
13 some of this language -- I'm not trying to pick on you or  
14 anything, but you know I went to school. I went to college,  
15 and I know how to tell, especially working for law  
16 enforcement, how you write your documents is how you're  
17 going to win your case.  
18 That's why when I was looking over this, I think  
19 someone with Native American background should be with you  
20 people to -- you know, all the lawyers in the world couldn't  
21 write anything for the Native Americans and get it right.  
22 I've never seen one today, unless the Native Americans are  
23 there to help them along.  
24 So I would appreciate it when you go -- or when  
25 you rewrite this thing, or whatever, that you do that. And do

1 this signature thing more legal and better, because even I  
2 could sign for the chairman if I was acting there that day,  
3 and I wouldn't know what I was signing. So that's -- I just  
4 wanted to get that straight. Thank you.  
5 MS. WENDY SCHMITZER: That's a really good point.  
6 MR. ALTWIN GRASSROPE: Altwin Grassrope is my  
7 name. (Speaking in Lakota.)  
8 Just sitting back listening to different  
9 individuals reminds me of what my grandfather used to say.  
10 (Speaking in Lakota.)  
11 These are the works of individuals, and I think  
12 he's right up to a certain extent.  
13 (Speaking in Lakota.)  
14 Whatever you've been hashing out, I think I'll be  
15 part of it. I don't know whether anything will be  
16 accomplished by it, but I see the secretary is typing away  
17 here, whatever we say, I hope that reaches the White House or  
18 the Congress, or whoever it is, whichever the president is  
19 going to be selected next. They are still arguing over that  
20 and they don't know who to really select or to be in charge,  
21 I'll say our government, because we do -- we are all citizens  
22 of the United States of America.  
23 So you know, this land that you've been talking  
24 about, the Great Sioux Nation, I have a great respect for  
25 that, because my uncle Garfield Grassrope, he was part of the

1 treaty council, and he did fight for his -- for the rights of  
2 the Lakota Oyate. He even went to Geneva, World's Port, as  
3 they call it, and he did submit some -- he was going to the  
4 White House at first, and finally they gave up and thought  
5 they would take a different route, alternative route.

6 But the land that you're talking about is a  
7 portfolio, you know. That word, I was looking that word up.  
8 What the hell does that word mean anyway, and Wicata, also,  
9 you know, they seem to use that word a lot, and it means  
10 security, bonds, you know, different kinds like that that  
11 belongs to an organization or a bank.

12 But anyway, the securities of this, the land,  
13 belong to the Lakota Oyate, and of course I feel a part of,  
14 and especially the Black Hills. There's a lot of it in there  
15 and, you know, since the beginning of time man, us man, human  
16 beings are prone to progress. And if this railroad is part of  
17 that, then I'm all for it because, what the hell, we're all  
18 human beings, and we're all trying to survive.

19 And whether we speak the English language or  
20 Lakota language, I think it's written somewhere in the bible,  
21 too, that we're all going to come to one language, and here  
22 we are speaking the English language, whether it comes from  
23 Great Britain, or wherever it came from. Maybe it came from  
24 heaven, I don't know.

25 But anyway, we have to communicate in a good

1 way, in a peaceful manner, and that is why we're all sitting  
2 here united, trying to be united anyway, although we are all  
3 of different -- from different Tiospayes, families. But I  
4 think we need to justify this so that we could all be  
5 brothers and sisters, get along good with each other. And to  
6 me, I think God wants it that way.

7 And again, I would like to phrase something from  
8 the English language -- I mean the English people, they say  
9 there are many gods. How many gods are there anyway? I  
10 thought there was only one God. That's what my grandfather  
11 used to say.

12 (Speaking in Lakota.) One God.

13 So I do hope that we come to some conclusion as  
14 far as this railroad DM&E thing. I don't think it's going to  
15 contaminate the route that it's going to take, because we're  
16 already contaminated anyway. The air that we breath is  
17 already contaminated, the water and everything else. So one  
18 day or another in the future, there's no way around it, we're  
19 all going to perish, and we're all going to die, one way or  
20 another.

21 Unless the new president can come up with some  
22 formula that, you know, to cure cancer or, you know, just for  
23 us elders anyway, the older ones, that he could turn us back  
24 to our younger days and we'll all be happy, you know, we'll  
25 all be young and be laughing around with each other, just be

1 loving one another, cherishing each other, and that's the main  
2 thing of everyone, I think, of every human being.

3 And I don't think Hitler understood that. He  
4 killed off all the Jews, and whatever, but then that's along  
5 the line. There was a railroad that was a part of that, too,  
6 when he was -- when that was taking place. But that's a  
7 holocaust that the world will never forget.

8 And I would like to explain myself, and I hope  
9 you guys all get along and go home happy, and especially that  
10 one over there, he has a curious look on him. You I'm staring  
11 at. And I thank you all for listening to me.

12 (Speaking in Lakota.)

13 MS. MARIE RANDALL: Good morning. I hear a lot  
14 of talk, I sit back and listen, especially the elderly women,  
15 you know, the sun we call it wee, and the woman, we call it  
16 wee; that's why the men respect the women. And we have a sun  
17 dance once a year for four days, that is to respect the sun  
18 and the woman. Without the sun there would be no vegetation.  
19 Without a woman there will be no life.

20 That's why the men -- 1882 United States  
21 government says no more sun dance. You listen to our bible.  
22 They put up churches that we were baptized in some churches.  
23 Today we read the bible, read the Ten Commandments. It says  
24 thou shalt not steal, thou shalt not lie, thou shalt not  
25 commit adultery, thou shalt not kill, and thou shalt not

1 steal, why?

2 What are we going to steal from them? They stole  
3 everything that we have, everything that grows within the  
4 territory of the Lakota people, gold, coal, timber, minerals,  
5 all taken away, and what benefit do we get? Nothing. And  
6 this country, the New England, they call it, after that all  
7 the foreigners come in, New York, New Jersey, New Hampshire,  
8 you name it, all the "new".

9 They say in the bible that God give us his  
10 promised land. No God give every person, nation, a promised  
11 land. When they went, the Great Spirit give us a promised  
12 land for everybody up there, not here. So thou shalt not  
13 steal, why they stole everything we got and we have to sit  
14 back and listen. Look what they took.

15 Now we live under many years the Great Sioux  
16 Nation, live under laws, regulations, rules and policies. We  
17 live under them. We never make laws against the United  
18 States, never, rules, regulations and policies and act.  
19 There's many acts was made, allotment act, and so on.  
20 There's many of them. We never voted for that, but when --  
21 there was an act that came and says in 1934 Indian  
22 Reorganization Act, and they force us to vote for that act.  
23 Why didn't they force us to vote for the other acts that they  
24 made?

25 So today these -- we registered our names. We

1 registered. Please don't use that that we say yes, because we  
2 only registered, that's all. So don't take that registration  
3 back with you and tell the people that these are the signers  
4 because these -- they always turn things around over in  
5 Washington, D.C.. So they probably say this is what we have  
6 and they all agreed. No, we don't agree. Thank you very much  
7 this morning.

8 MR. JOE SWIFT BIRD: My name is Joe Swift Bird,  
9 Senior, but the religion people called me St. Joseph.

10 MS. CLAIR GREEN: Is there anyone else that has a  
11 comment. Is it on? I'm sorry. Mr. Swift Bird had such a  
12 quiet voice when we were playing with the volume. So could  
13 hear him?

14 MR. FREEMONT FALLIS: I wanted to state for the  
15 record that I asked Syed Huq from the water resources  
16 department, he is in charge of the EPA, the Clean Air, Clean  
17 Water Acts. He has a lot to do with that, but he could  
18 probably put his written comments in, huh?

19 MS. CLAIR GREEN: Written comments, at the  
20 present time the deadline is January 5th.

21 MR. FREEMONT FALLIS: I'm also commissioner on  
22 the Tribal utility commission, and I requested our director to  
23 be here to make public comment in regards to this global  
24 warming, that we are in the process of using renewable  
25 energies versus your fossil burning, coal-fired plants. So

1 if they are not here, I'll take some of that back and they  
2 could do their own written comments. Thank you.

3 MS. CLAIR GREEN: Yes. And I think I can say,  
4 and Vicki correct me if I'm wrong, should there be  
5 consideration of an extension of time, that we could try to  
6 send notices to people on the sign-up sheet; would that be  
7 correct, or not?

8 MS. VICTORIA RUTSON: We've had many, many  
9 requests for extension of time. So the Board will be issuing  
10 a decision and sending out notices if the time extension is  
11 granted. So there will be -- if it's granted, we will do our  
12 best to make sure that everybody knows what the extension is  
13 and when the new date will be.

14 And I also wanted to let everyone know that  
15 you're more than welcome to take comment sheets home with you,  
16 and if you think of things that you would like to tell us,  
17 even many things, you're welcome to submit as many comments as  
18 you would like to. You don't need to just submit one. If you  
19 think of something more later on, you're welcome to submit as  
20 many comments as you feel you need to to make your views  
21 known.

22 MR. FREEMONT FALLIS: And have you received a lot  
23 of comments in regards to endangering some of these  
24 agricultural lands or --

25 MS. VICTORIA RUTSON: I've been busy on the road

1 most of the time, so I haven't looked at the comments yet.  
2 But from what I understand we've received about 350 so far,  
3 and right now we're in the process of logging them all in,  
4 putting down the issues. So when I get back to Washington,  
5 one of my first jobs is going to be to start reviewing all the  
6 issues raised in the comments.

7 MR. FREEMONT FALLIS: Well, not only the Oglala  
8 and Lower Brule Sioux Tribe, which are the two Tribes that are  
9 going to be affected, they have a lot of agricultural lands on  
10 their reservations, you know, that even the coal dust that  
11 will be blowing off these boxcars that could affect their  
12 agricultural lands, too. So maybe, I don't know, Harold, do  
13 you want to make a comment on that?

14 MR. HAROLD COMPTON: Hi. My name is Harold  
15 Compton. I'm the realty officer for the BIA agency here at  
16 Rosebud, and I need to apologize to all the elders and great  
17 minds that are in this room. It really encourages me. I  
18 heard the train was coming for a couple years, and today I  
19 guess it's here.

20 It's something, you know, that when Mr. Fallis  
21 mentioned agricultural lands, I followed this thing. I go to  
22 Rochester, Minnesota. I happen to be there two weeks ago, and  
23 I made a little trip to the Civic Center there, watched the  
24 hearings there for the people here. It was a great  
25 opportunity for me to see on the other end of this things what

1 the comments are from -- there were some agricultural people,  
2 but really the City of Rochester, and Mayo Clinic has a very  
3 large stake in this.

4 Mr. Fallis was talking about the agricultural  
5 lands. You know, my first response to this thing, and I'm  
6 speaking -- I apologize, but I'm speaking as the BIA realty  
7 officer. I would like to know -- I have not read the 5,500  
8 page draft EIS. I don't think anybody is carrying that around  
9 with them here. Dave is a pretty strong guy, but I don't  
10 think he has one. It would be a good weight for the snow,  
11 though, when you go back.

12 I was curious, you know, the agricultural people  
13 in Western South Dakota have some real concerns. The people  
14 that I think we're boiling down to a couple issues with the  
15 agricultural people, the people being crossed, and the people  
16 not being crossed by the right-of-way, not in my back yard.  
17 One of the questions that they -- actually I've had several  
18 people just comment, even though this does not cross the  
19 Rosebud Reservation, as we see it on the map, believe me,  
20 there's plenty of interest here from -- obviously you see  
21 that here.

22 Agricultural people have asked me, how can they  
23 find out if it's going to benefit them or not. And I have a  
24 hard time saying, Well, read that draft EIS. You know, and  
25 obviously the comment period needs to be extended by the

1 Surface Transportation Board, or this is not fair to the  
 2 people. I did hear a city, I can't recall, in Minnesota  
 3 saying they had spent six figures on this already. And they  
 4 have a lot farther to go, and they want to know if they are  
 5 wasting their money, if the train is already coming.  
 6 The agricultural people on our reservation, and  
 7 we have many, all the reservations have Indians that operate  
 8 on the land that are farmers and ranchers. They don't know.  
 9 We all hear the train is coming. I think an executive summary  
 10 or something reasonable to people, maybe there's one in this,  
 11 I don't know, you know, maybe that's what needs to be sent out  
 12 to people. Because I tell you, 5,000 pages, that's a big --  
 13 I've seen a lot of these in 20 some years, but that's a big  
 14 document.

15 I think the agricultural people of the  
 16 reservations deserve to be considered, even though they might  
 17 not be the large numbers that we hear about. They are out  
 18 there. The other comments I would like to make, and I  
 19 apologize for not being here yesterday. I had some other  
 20 things to do. But is this safety -- does the Surface  
 21 Transportation Board have a position on -- and maybe Charmaine  
 22 is really well educated on this. I've read of a lot of her  
 23 stuff.

24 Do they have a position on west of the Missouri  
 25 River, from the east bank? That's what the treaty of 1868

1 says. If you research the history of these treaties, you'll  
 2 read about the time the Sioux got to burn some forts in  
 3 Wyoming as a result of renegotiating those treaties. The  
 4 interesting story to see the army leave the forts and the  
 5 Sioux go in and burn them right behind them.

6 I would be curious, and maybe it's in that draft  
 7 EIS, that big document, what the position of the Surface  
 8 Transportation Board is as far as all lands in Western South  
 9 Dakota, from the east bank of the Missouri. I don't know if  
 10 that's in there. That's what Marie was talking about, you  
 11 know, we're I'm a person that boils land down to, you know,  
 12 who owns it today. I have a tendency to do that.

13 I appreciate what the gentleman from Lower Brule  
 14 said. He reminds me of things that are true. I try not to  
 15 just focus on the title of a piece of land. You buy a lot in  
 16 Rapid City, South Dakota, and the non Indians here can  
 17 appreciate this, it's called a title insurance policy.  
 18 Everybody that buys a house, check it out in Western South  
 19 Dakota. They have a disclaimer. It's called a Schedule B,  
 20 and it disclaims any insurance policy on potential land  
 21 ownership, land claims by Indians or Indian Tribes.

22 I don't know what that means to an easement on  
 23 the train that's coming, but that would be -- I think the  
 24 Sioux Tribes and the organizations and the people here deserve  
 25 to know what the Surface Transportation Board's legal position

1 on that, on the easement crossing what you would call deeded  
 2 land in Western South Dakota versus an allotment, you know.  
 3 Rosebud is out of this loop, apparently, because  
 4 you know on a map it doesn't cross Rosebud, but I guarantee  
 5 the people of Rosebud, and you see a lot of them here,  
 6 Mr. Metcalf, I don't know if he's had an opportunity to speak,  
 7 but he's told me many times about the people of Rosebud being  
 8 more than just confined to this area.

9 And we need to respect that. That's something  
 10 that I would like to see personally, and that's my interest  
 11 here as a Bureau of Indian Affairs official. Even though this  
 12 is, quote, off the boundaries of the Rosebud Reservation, you  
 13 can not talk to these people anywhere without addressing that  
 14 1868 treaty. That's a fact.

15 I've been to many hearings everywhere and people  
 16 have tried to separate that out. You can't do it. They are  
 17 one in the same. Everybody in this room is one in the same  
 18 when it comes to that. I would like to see that position laid  
 19 on the table for these people to deal with. As the lady from  
 20 North Dakota said, we have our attorneys, too. And they will  
 21 look at that position.

22 I'm not clear what that position is when you --  
 23 the gentleman talked about the act, some acts we voted on,  
 24 some acts we didn't. Mr. Vader, he's familiar with the 1877  
 25 act that basically stole the gold mine that these people are

1 talking about. We didn't vote on that act. The only thing  
 2 that these people ever voted on was the Treaty of 1868. After  
 3 that Congress diminished the reservations to what we have  
 4 now.

5 It's the truth. This issue is going to come.  
 6 The people of Minnesota know the Lakota people west of the  
 7 river may have a stake in this, may have a say-so. And I  
 8 would like to see that, and I apologize for not having an  
 9 opportunity to read that big document. I'm scared of it. I  
 10 know it's on the internet, but I could spend probably the  
 11 next year trying to digest that thing, and the comment period  
 12 ends January 5th. That's really not right to the public.

13 One other comment, I saw in the agreement that  
 14 you have, very difficult document, very difficult. I don't  
 15 know how you're going to get the Comanches of Oklahoma to sign  
 16 an agreement up here, Terry, but good luck. I saw they are on  
 17 there. That must be the Mni Sose Tribes, or how those names  
 18 came up, I would be glad to.

19 MR. TERRY GRAY: All the Tribes that are  
 20 potential targets or signatories on the MOA, DEIS were Tribes  
 21 that had substantiated proof archeologically, prehistorically,  
 22 in the Black Hills. For example, there are numerous, well,  
 23 Kiowa burials, but it was based on the archeological evidence  
 24 in place now and acknowledged by the State Historic  
 25 Preservation Office, and maybe the elders are -- I mean the

1 people that have talked with the elders more than I have could  
2 give some input on any other people.

3 MR. HAROLD COMPTON: Somebody here mentioned the  
4 Canadians, and I am a descendent of Crazy Bull's, there's  
5 Kiowas in Canada. A lot of people ran to Canada after the  
6 Minnesota wars and stayed there. So we have relatives there  
7 and there's more involvement. Rosebud Sioux Tribe it talking  
8 about recognizing their blood relationship with us.

9 One other comment I wanted to make and I'll sit  
10 down, is the issue of privacy, as far as the archeological  
11 agreement, Marie -- and it's very difficult for me to even  
12 talk about these grave sites. It's been so controversial.

13 I see Mr. Quiver over there, and what stand he  
14 made, and I think of him and I think of how we're going to  
15 expose things that don't need to be exposed, that people don't  
16 want exposed. Every time you find a grave you have to  
17 mitigate it. You have to do something with it. You have to  
18 disturb it. People don't want that. That hurts our circle.

19 Private land that's, you know, in there, it says  
20 private landowners will have rights. We have issues with  
21 archeological sites on private lands and who -- you know, who  
22 has the right to deal with those, not just graves, not just  
23 human remains, but the other things that they may come up  
24 with. That's going to be a very big issue here. It is.

25 And my understanding is there has been some new

1 archeological work done on this route. Is that what I  
2 understood today, there's been some new surveys done already?  
3 I guess I would like to know what lands, if it's just --

4 MS. CLAIRE GREEN: Could you ask the question  
5 again?

6 MR. HAROLD COMPTON: You mentioned there was some  
7 new archeological work done on -- could you tell me where  
8 that's been done.

9 MR. DAN SHINN: Yes. At the request of the DM&E,  
10 they selected a route, took a chance that it might be the  
11 approved route, not that it will be, and where we were granted  
12 permission the archeologist did survey some areas, both along  
13 the existing route from Winona, Minnesota all the way across.  
14 Some areas have been surveyed, some areas have not. And then  
15 on the proposed new route area, some areas in South Dakota and  
16 some in Wyoming, but not all.

17 MR. HAROLD COMPTON: So basically those have been  
18 done with private landowners or --

19 MR. DAN SHINN: Private landowners and Federal  
20 land that's been -- essentially all it has been, and of course  
21 the DM&E right-of-way within South Dakota, areas along that.

22 MR. HAROLD COMPTON: See I guess my feeling, I  
23 don't know what input the Tribes have had. I mean when you  
24 say the train is coming, the train is coming, you know. And  
25 it's happening already as we sign a Programmatic Agreement.

1 These things are really -- two years from now we'll still  
2 have that.

3 I think the ladies talked about the Tribes being  
4 very careful of what they do. I know when they talk, I  
5 listen. Marie is a very intelligent lady and when she talks I  
6 listen. I would like to mention Garfield is not here and  
7 Simon Broken Leg is not here. We're losing some of those  
8 people. It's good to see others step up. Mr. Vader has  
9 known them all over the years now.

10 This is a sensitive subject with these people  
11 because the railroad came here before and destroyed -- tried  
12 to destroy the Sioux Nation in Western South Dakota. It  
13 played a part in it. Some people call it progress, we all  
14 drove cars over here. I don't know, it's a complicated issue,  
15 you know. We like to travel, too, but a railroad train every,  
16 what, 40 minutes, that's a big thing barreling across this  
17 state, through downtown Rochester. It's a big issue.

18 I find it interesting that this may be impacted  
19 by the presidential election more than I care to think  
20 about. I would just like to throw a couple of those things  
21 out. I think the Tribes need to know, and the other people  
22 need to know, number one, what is the Surface Transportation  
23 Board, are they going to let litigation, mitigation,  
24 arbitration, negotiation decide that? You know, is it a  
25 dimpled chad or perforated chad? But we need to know that.

1 And as a Federal agency they need to know that  
2 with the Tribes. They've had struggles with other Tribes.  
3 Freemont knows that with the EPA, what some legal positions  
4 as far as what the 1868 treaty is, and what the, you know,  
5 jurisdictional issues are there.

6 Basically I believe probably the position now is  
7 that if it's on deeded land in Stanley County, the Rosebud  
8 Sioux tribe has no involvement with it, no say-so on it. The  
9 easement would be granted by the landowner, is the way I  
10 understand it. Terry asked me what eminent domain meant. It  
11 meant manifest destiny.

12 Those issues I would like to see, and these are  
13 the questions. This isn't just my own. This is questions  
14 people have asked me about in my office, dealing most of the  
15 time with different issues, and I appreciate you all being  
16 here, I do. I appreciated the opportunity in Rochester to  
17 hear it.

18 I think the Programmatic Agreement, as far as  
19 the archeological inventories, is going to be very difficult  
20 to get signed by all those people, I really do. And I don't  
21 know what your options are then. That's for DM&E and Surface  
22 Transportation to come up with, I guess, because they are the  
23 Applicant.

24 I was really heartened to see all the names  
25 yesterday. We're a long way away from the where railroad,

1 some people would say, and other people would say it's right  
2 next door. It will probably be about a hundred miles from  
3 here. But I'm glad you came to Rosebud, and I appreciate all  
4 the people coming here, too. Thank you.

5 MR. TERRY GRAY: Harold, let me ask you a  
6 technical question. Being the realty officer, in your  
7 experience under the Interior just granting easements on  
8 projects within the Department of Interior, has there been  
9 what you would say either dual easements or overlapping  
10 easements that are allowed?

11 The reason why I'm asking is because we got into  
12 an in-depth discussion on easements, I guess, and the Medicine  
13 Wheel Coalition put in an official request for the Tribes and  
14 participating organizations to be considered on that easement  
15 and the response by some, which Department of Interior  
16 agencies -- not the Bureau, the BLM -- I don't have the list  
17 in front of me.

18 They were kind of contesting the dual easement or  
19 overlapping easement, or maybe if you could, I guess, what I'm  
20 trying to see, if it's possible, and for our court reporter  
21 and for STB, I mean if it has been done, then that's proof  
22 that an agency, in regards to undertakings, has allowed that  
23 process. Sorry for the question.

24 MR. HAROLD COMPTON: It's a very complicated  
25 question, and historically we started easements a long time

1 ago and the government took property and Tribes granted  
2 individuals property. What you're asking me is if a Federal  
3 agency, or the Bureau of Indian Affairs, or the State of  
4 South Dakota, or the BLM has granted an easement to one  
5 entity and another entity has been able to use it?

6 Yes. Yes, but it is a long, convoluted -- it's  
7 been convoluted by the courts and interpreted by the courts,  
8 depending on the easement, depending on the regulatory  
9 authority, statutory authority that the various agencies had.

10 The Bureau of Indian Affairs has granted  
11 easements to the State of South Dakota, and within those  
12 easements have become either -- they have been able to grant  
13 other easements, what you call piggybacks, what would you call  
14 what they call them permits to occupy rights of ways. I know  
15 I have experienced some with the BLM where they were actually  
16 getting utility corridors across BLM lands to grant potential  
17 easements in the future.

18 So, you know, if you were looking for an  
19 opportunity for the tribe right now, the Tribes to utilize  
20 this railroad right-of-way, is that what you're getting at?

21 MR. TERRY GRAY: Yes, sir.

22 MR. HAROLD COMPTON: It would have to be  
23 negotiated with DM&E, with the other agencies that are  
24 granting the easements. Unfortunate thing is history has,  
25 you know, been really distorted in some cases because we did

1 not exclude other utilities. They were able to use them.

2 Today, in this day and age, it would be probably  
3 DM&E's exclusive right-of-way, most likely. I mean, I don't  
4 know, that's what DM&E would want. Whether other individual  
5 landowners or Federal agencies would allow some kind of other  
6 access within -- and of course they get real engineering  
7 design issues and technical issues like that.

8 But I mean I wouldn't see it out of the realm of  
9 possibility to utilize that corridor, but it would be best  
10 planned now as they design the thing. That's sometimes -- the  
11 physical limitations for what you want to put. I don't know  
12 what you're talking about putting in there, but you know it  
13 would have to fit, not interfere with their use as the  
14 railroad.

15 MR. TERRY GRAY: I think what the topic of  
16 discussion was was an easement in itself is defined as a  
17 legal right-of-way. And so under -- because the Federal  
18 courts are having a hard time acknowledging our traditional  
19 religious practices. And we discussed that there was only  
20 one court case that acknowledged the Native American  
21 religion, which we're not Peote. Well, there are some  
22 Lakota Peote people, but unfortunately for natives it's not  
23 acknowledged under the U.S. Constitution.

24 And so we were looking at trying to piggyback,  
25 and pushing it around, whether it was overlapping, or if we

1 could have the first easement, or if we could just piggyback  
2 the easement to guarantee, access just in case there are  
3 religious sites that could be still in use today. Because  
4 the reason why we are technically going after the easements in  
5 support of the Medicine Wheel Coalition is because of the  
6 religious -- we're trying to stick up for the religious  
7 rights-of-way, and for some of the agencies here, and I'm not  
8 picking on any one of them, but there's been a few of them  
9 here saying we don't do that. We don't do dual easements in  
10 an irrigation something or other.

11 MR. JAMES KANGAS: I can elaborate on that when  
12 you're finished.

13 MR. TERRY GRAY: But I'm glad you said that,  
14 because that means in the Department of Interior the Secretary  
15 has that authority in true historic preservation, and we were  
16 just checking around, whether it just said preservation  
17 easement, when just for jokes me and Francis were saying what  
18 about -- because STB is having a hard time with the treaty  
19 issue, what about a treaty easement.

20 But, no, the real issues were there are some  
21 certain areas that the Federal agencies are granting a  
22 right-of-way, and because there's going to be archeological,  
23 historical and maybe religious sites within that corridor,  
24 we're afraid that, okay, let's take a worst case scenario.

25 Let's say the Tribes don't want to sign this,

1 but nevertheless we still don't want to rule out our option.  
2 What is our option? Well, we want to have an easement so that  
3 we still -- we don't get left out of the EIS process. We  
4 could still negotiate our religious right access. Can you  
5 kind of see what we're trying to accomplish?

6 MR. HAROLD COMPTON: That's a position that I  
7 think the Tribes could take. It would undoubtedly -- and the  
8 fact of it is any time Forest Service, Bureau of Rec, anybody  
9 grants an easement, you have an opportunity to comment on  
10 that. It's a public action. It's a Federal action. You have  
11 an opportunity to comment on.

12 There's a little document out there somewhere,  
13 you know, that they did, that they -- or a big document that  
14 they did that would have given you an opportunity to comment  
15 on. I don't think we get everything we should from Western  
16 South Dakota, quite honestly from all the Federal agencies,  
17 and it's because a lot of times people look at the maps and  
18 just see us down here in the corner and that's as far as they  
19 want to go with it.

20 It gets too complicated to deal with all the  
21 other issues like you're talking about. The religious sites  
22 in the Black Hills, the existing roads, I know that's a big  
23 concern with Freemont, existing roads in the Black Hills, and  
24 our ability, if they are going to build more, to be involved  
25 in it. I don't know specifically where they are crossing BLM

1 or Forest Service lands, if there's new rights-of-way being  
2 proposed by DM&E. I saw the map that showed the new sites,  
3 but they didn't have it layered over government or Indian  
4 lands.

5 It would be interesting to see what DM&E is  
6 asking for just -- and the easements can be granted for  
7 railroad purposes only, for electrical line purposes only,  
8 water line purposes only. They need to be specific. They  
9 can be and I think that's the way the Federal agencies have  
10 gone anymore.

11 It used to be we grant something and 20 years  
12 later there would be things involved because we did not  
13 exclude them. Now we are better. We say six-inch water line,  
14 a road, electrical line, or they are selling the easement to  
15 other people making money off it. Thank you.

16 MS. CLAIR GREEN: We're going to continue with  
17 comments, but I would like to make sure that everybody has  
18 signed the sign-in sheet, because I'm going to go copy it so  
19 we can have it when we close the questioning. I just wanted  
20 to ask everyone if you haven't signed it, please sign it.

21 MR. SONNY ZIEGLER: Sonny Ziegler from Lower  
22 Brule Sioux Tribe. I'm a Tribal council member. I got one  
23 question, if the STB doesn't grant the extension, does this  
24 give -- does this put the tribe in a position to make a  
25 decision in a hurry?

1 MS. VICTORIA RUTSON: Well, I think it's  
2 dangerous to assume that there isn't going to be an extension,  
3 but you want to proceed as though there isn't going to be an  
4 extension. First of all, I don't think that's necessarily a  
5 good assumption.

6 MR. SONNY ZIEGLER: There's a chance though.

7 MS. VICTORIA RUTSON: Of course there's a chance,  
8 of course. In three weeks of public meetings a lot of people  
9 have requested an extension. I would say hundreds. I think  
10 that's accurate, hundreds of requests. If the extension  
11 isn't granted, it would mean that comments are due January  
12 5th. It means that everybody's comments would be due January  
13 5th, the ranchers, the people who want the railroad to come  
14 through, the Applicant himself, the Tribes, the farmers, the  
15 people at the Mayo Clinic, and when the process is all  
16 finished, all of those people would be able to say, We believe  
17 that our right to comment on the Draft Environmental Impact  
18 Statement were undercut by the comment period. So that would  
19 be an argument that they would have in Court.

20 MR. SONNY ZIEGLER: But the STB has the right to  
21 say we're going to go ahead with the deadline, right?

22 MS. VICTORIA RUTSON: The only law that exists  
23 about comment periods is that there has to be a minimum of 45  
24 days. That's the only time frame, and that's the minimum.  
25 There's no maximum number of days set. So originally the

1 Board felt that 90 days was reasonable. That's twice as long  
2 as the minimum. But again, we've heard many, many people say  
3 that the document is long and complex and that 90 days isn't  
4 enough.

5 MR. SONNY ZIEGLER: I wanted to be on record.  
6 Thank you.

7 MS. VICTORIA RUTSON: Thank you.

8 MR. JAMES KANGAS: James Kangas, U.S. Bureau of  
9 Reclamation, Rapid City. Easements, preservation easements,  
10 Terry, you're warping my brain. So is our friend from the  
11 Medicine Wheel. That's a tough one. It depends on the land  
12 status, whether the land where the easement is is strictly  
13 under Federal control or whether that land is a Federal  
14 easement and whether there's a Federal easement on private  
15 land for a specific project.

16 One thing I sincerely hope is that the corridor  
17 avoids sacred sites and traditional cultural properties,  
18 which brings in the question, Why would there need to be the  
19 right-of-way to be used as access for sacred sites? I  
20 thought the intent was to avoid those. It seems then there  
21 would have to be some sort of treatment plan to accommodate  
22 that. And in fact perhaps permitting access could be a  
23 component to that treatment plan. I don't know.

24 I'm not being critical. I think it's a concept  
25 that deserves some pondering, serious pondering, and what I

1 would request is I realize this is just a conceptual idea  
2 here, and I like that. But if it goes much further what I  
3 would like is some correspondence on that, so I can direct  
4 that to our realty staff.

5 Because I've almost already gotten in trouble on  
6 these sorts of things. I don't want to be there again, and  
7 so that I can forward that to our area leadership in the  
8 Dakotas area and we can look at what our legal  
9 responsibilities would be. Because I'm also looking at the  
10 big picture. For example, what would happen perhaps if 30  
11 years from now DM&E goes out of business and they sell those  
12 easements or those easements are denied.

13 There's some long range implications here. And  
14 I still advocate that on public lands, you know, there is  
15 access to sacred sites, Executive Order 13007, and that's  
16 still out there. That's still -- that's on public lands, and  
17 then there's the issue of access to sacred sites on private  
18 lands. I realize this is an attempt to deal with that, but I  
19 don't know if it's a fruitful attempt or not.

20 MR. JEFF CADOTTE: My name is Jeff Cadotte. I  
21 want to make some comments here. In the Rapid City Journal,  
22 September 4, 1999 printed the following statement: The  
23 geological underpinning upon which DM&E proposes to build is  
24 extremely unstable. Ranchers have been fighting the unstable  
25 terrain for years.

1 The entire area which DM&E proposes for its  
2 construction, what preventative measures does DM&E intend to  
3 take to prevent weakening of the rail systems? Furthermore,  
4 according to the EIS, Chapter 1, Table 1-1, Table 1-2 and  
5 Table 1-3, in your own words: DM&E's accident rate is high  
6 and compared to the accident rate for all railroads, is among  
7 the highest in the rail industry.

8 If DM&E has achieved this questionable place of  
9 recognition in the accident area, what guarantee do we have  
10 that there will be no accidents on Treaty protected land?

11 And the Oceti Oyate considered the Black Hills  
12 sacred for 10,000 years. Wind Cave Black Hills is where we  
13 began as an Oyate. The 1851 and 1868 treaties were signed  
14 with the Federal government and Lakota/Dakota/Nakota, Oceti  
15 Sakowin. At the time we believed we were dealing with  
16 honorable men, men of integrity. They took the gold that was  
17 discovered, not in the Black Hills, but our treaty land area.

18 The coal that DM&E proposes to haul is part of  
19 our mineral rights, preserved for us in our treaties, the  
20 treaties and laws that allowed theft of treaty lands does not  
21 generate any trust in the white man and any of their  
22 processes. Consultation does not guarantee honesty and  
23 integrity.

24 Based on its environmental analysis to date SEA  
25 determined that the Powder River Basin Expansion Project would

1 result in significant long term adverse environmental impacts  
2 as follows: Number one, safety, including emergency vehicle  
3 access and response; geology and soils; agriculture; ranching;  
4 traditional Tribal resources; residential and public land  
5 uses; surface water and wetlands; ground water; air quality;  
6 noise and vibration; vegetation; endangered species; visual  
7 resources; Corps of Engineers -- the Corps of Engineers won't  
8 do their own EIS. For these reasons I oppose the DM&E  
9 Railroad. Thank you.

10 (Speaking in Lakota.)

11 MS. MARIE RANDALL: On these papers you don't  
12 have -- the treaty rights is left out. You have chairman and  
13 presidents of other organizations, and you left out treaty  
14 rights. You know, from the time that we agreed with the  
15 treaty rights agreement was nation to nation and it was  
16 created by the United Nations, the Great Sioux Nation was  
17 created from that, and under that we created our land of the  
18 law.

19 And you talk about clean air, the animal kingdom,  
20 the plants, the water rights, and that's Oyate, Oyate rights  
21 that you are asking us to give in again. It's our rights, and  
22 in Wicata way they say the human rights. All these are  
23 connected to the law of the land that we believe in as Lakota  
24 Oyate.

25 And when the laws are made by the other system,

1 we have never broken our laws, the law of the land. That's  
2 why we're really fighting for the rights of our ancestors that  
3 have laid down their lives for us. But there has been some  
4 promises that's been broken over and over and over.

5 Agree -- make an agreement, amendment or an act,  
6 and broken your promises to us, to the Lakota Oyate, and now  
7 we're being tired of that, and you have done some things that  
8 hurted our people, and we're still in the mourning stage. We  
9 still didn't forget them people that have died for us for  
10 their land. You're disturbing the sacredness of our life and  
11 our ancestors and the future generation.

12 It's sad when I come to that point, and I hope  
13 that government that created this nation which stands on his  
14 promise and legal way, that we have understood by our people,  
15 and not to break any more promises to us. We're tired of the  
16 broken promises, and we want a better future for our  
17 generation that's coming behind us, walking behind us.

18 And I'm sure you people that are here listening  
19 to us, and the whole United States, people are looking at  
20 better future for their generations. And I think it's time  
21 the nation they created for us, they can negotiate with us in  
22 a rightful way, not just promises, but a legal way, to make it  
23 better for our future.

24 That's what I'm standing on as an elderly Lakota  
25 woman. And I believe in myself. I'm proud of myself as a

1 Lakota woman, and I want every one of you to understand that I  
2 created the generation Lakota Oyate, and the nation, and  
3 that's what I'm standing for and continue to stand for, my  
4 nation of Lakota Oyate. Even if I just use my voice to try  
5 and make others understand why I'm standing up for my nation.

6 (Speaking in Lakota.)

7 We live a happy life. I'm just saying that we  
8 don't have money in our purses, you know, but we have all the  
9 pill boxes that the doctors of today gave us, and it's just  
10 like the rattler that is given to the infant to make all that  
11 noise to keep himself occupied, us elders carry a whole bunch  
12 of pill boxes rattling in our purse. But we're happy because  
13 that's continuing our life, making it better and less painful  
14 for us. And we joke, we joke because all the stressful times  
15 that we have lived through our lives and through our  
16 ancestors.

17 Imagine we're coming to an anniversary again  
18 where the people -- a chief was going to an agency with his  
19 people to get help and on the way he was massacred. Find some  
20 of those pictures. Look at them. Look at the soldiers  
21 standing over the graves, unloading our people into that mass  
22 grave. Find those pictures and look at them and maybe you'll  
23 understand why I say we're still in a mourning stage, and  
24 we're fighting for the rights of the benefits that is left to  
25 us to carry on for our future. Thank you very much.

1 MS. MARY JANE TIOKASIN: I am Mary Jane  
2 Tiokasin. You said you wanted comments on this Appendix J,  
3 Programmatic Agreement Identification Plan. On page five,  
4 No. 4, Eligibility Disagreements. If a consensus on the  
5 eligibility of any cultural resource cannot be reached, the  
6 Surface Transportation Board shall forward objections or  
7 comments on determinations of eligibility to the Keeper of the  
8 National Register, the Keeper, for resolution.

9 Isn't that the government? So it should say  
10 that. And then here No. 5, it says No Consensus. This is the  
11 one that I looked at that kind of bothered me. You know, a  
12 long time ago I used to read people's reports at school and  
13 say, that's not right. They used to call me teacher because I  
14 guess I've done that all my life.

15 If a consensus of project effect upon a historic  
16 property cannot be reached, the Surface Transportation Board  
17 will seek the Council's finding. Council's determination in  
18 matters pertaining to findings or effect are final. Now what  
19 council are you talking about?

20 You know, you have to put these words in here so  
21 we understand if we're going to read this and make comments on  
22 it. But we have to have the final consensus, the Native  
23 Americans, because of the cultural differences, major  
24 differences in how we look at things and how you look at  
25 things.

1 And I believe while I told you yesterday I'm  
2 going to be 70 years old, I have lived a long time, and I  
3 expect to live to 100. Some will probably say thank goodness,  
4 but I've always thought about these things that happened a  
5 long time ago, because we've never had -- in my father's day  
6 we've never had -- the government had a close hold on us.

7 We were raised in military type schools. You  
8 were told to march to get up, to wear one suit, come back to  
9 school, change into play clothes, line up, make sure you're  
10 in one place. Everything was march, march, march. You had to  
11 answer your name every time they called it, and we had them  
12 types of boarding schools, cruel ones, because we've never had  
13 Native American ones at the top. We never knew we had  
14 constitutional rights when I was growing up.

15 My mother died when I was six years old. I was  
16 shipped off to boarding school, a white boarding school, and  
17 you learn -- had to learn to be tough. You had to learn to  
18 fight back. You never had the opportunity to say what you  
19 wanted them to do or even mention, they cut your hair if they  
20 felt like it. When you took a shower you stand in line and  
21 take a big brush and peel the skin right off. That's  
22 terrible. We're not ever going to go back to that again.

23 So we have a voice in what is going on with this  
24 agreement, and the people that are doing this are youngsters.  
25 They haven't seen the backlog of what's going on. And they

1 work for the people, so they should cooperate with us, the  
2 treaty people, the people on all the reservations.

3 Because you know this concerns all of us, and  
4 this Oceti Sakowin Treaty people goes back a long ways, up  
5 into Canada, Wyoming, Minnesota, Montana, North and South  
6 Dakota, and it's under the 1851 Treaty, and I believe that --  
7 I'm not saying that you're dumb, that you don't know  
8 anything.

9 But you need to be educated on the Native  
10 American livelihood, what they want. We're tired of taking  
11 orders, taking orders, taking orders from the United States  
12 Government. It's the responsibility to make sure that we live  
13 the life we want and they do as we requested. But you know  
14 you get this political thing in there and you have to do what  
15 they say. But we have a voice now and they should listen.  
16 They have to listen.

17 President Clinton opened the door for us for the  
18 second time, and I believe that this democrat-republican thing  
19 should be put aside and listen to the Native Americans and  
20 make these treaties a reality again, because I had one niece  
21 under the treaty that says you have to -- they will give you  
22 a house, a plow and a horse, and all that.

23 Well, I never got all those things. So I'm  
24 going to live until I get them, which probably never will be,  
25 but you know this dinosaur they call Sue, that's my great,

1 great, great grandma, I guess, because my cousin is from  
2 Canada and he got married to Cheyenne River and they found  
3 that dinosaur on his land, and the government tried to take  
4 it. But he got it back and he sold it.

5 But you know things like that happen. They  
6 found it on his land, so naturally it's his. But the  
7 government had to have a hand in it to make everybody know  
8 that they are the big bosses. They took it way from him.  
9 They shipped it out to some museum, and I used to talk to  
10 him. I said, What are they going to do about Sue? I don't  
11 know, he said. They took it and I want it. He said, I want  
12 it back. It's mine. It was found on my land.

13 And see what I don't understand is why they are  
14 sending all these people out here to ask the questions of the  
15 sacred sites, and all this, and yet they just overrule, and  
16 that's not right either. So I think that, you know, this  
17 thing here, the Programmatic Agreement has to be rewritten.  
18 There's words in there that don't explain, like the council.  
19 We don't know whose council you're talking about.

20 And you heard a lot of wise comments, you  
21 youngsters up front there, and we know that you're not the  
22 bosses. You do what they tell you to do, and when you get  
23 back and they say no use answering them, there's too many  
24 comments, we'll just do it, you know, and that's not right  
25 either. So they send you down here. Well, you should help

1 us fight for these things that we comment about these three  
2 days.

3 There's a lot of wise words that were said, and  
4 I appreciate everybody that has been making comments, but I  
5 was talking to Jeff here. He's a very alert, young man and he  
6 understands. He even went on the train ride with Schieffer,  
7 Kevin, and he explained to him what was going on. So he knows  
8 exactly, and he remembers word for word, I think. There's  
9 very few people that can do that. And if he sees something,  
10 it's like a camera, he remembers where it was, who it was, who  
11 said this. And that's why we have him in our group, and we're  
12 training the youngsters in our group that want to be part of  
13 it, to work for their people to do these things. So we call  
14 in more elders that know more.

15 We lost a good, great leader in Virgil Big Horse,  
16 but he told us that we must never ever give up the Treaty of  
17 the Native Americans and United States Government, and he said  
18 you have to make them listen to what you want, and you have to  
19 make them understand that this is our land.

20 And the last thing I'm going to tell you is  
21 about that Supreme Court case Dr. DeVille and them took to  
22 Washington, D.C. to prove that the Native Americans were the  
23 first ones, Lakotas were in the Black Hills by constellation,  
24 the star people. If you could ever see that, you would  
25 believe what we are talking about. It shows certain times of

1 the month how the stars shine on the Bear Butte or the sacred  
2 places.

3 And so he proved in the Federal Supreme Court  
4 that the Native Americans, the Lakota people were in the Black  
5 Hills first, thousands of years ago, and they won their case  
6 in Washington, D.C.. If you ever look it up, it's there, and  
7 what more do we have to go through to make the United States  
8 Government understand that this is our country. They should  
9 abide by our laws, what we want them to do, instead of sending  
10 us 15 miles of books to read and all this, when they could ask  
11 us.

12 And our historic preservation officer isn't  
13 here, but I wished he was, because he could tell us a lot  
14 more. He's talked with people from Congress. We will do  
15 what we want. You people have in Rapid City heard him, that  
16 you talk and what you want done, but we will do what we want.  
17 They told him that. He said they will get it done if they  
18 want to, no matter how much you complain.

19 So that's why we have all been talking among  
20 ourselves, isn't this railroad already done? We need that  
21 answer. We have to know, because we're not giving up. We  
22 don't give up, at least I don't.

23 I said I wished I could have lived when Fort  
24 Robinson, they were putting all the Indians there, starving  
25 them all to death. Here my brother-in-law said, Well, the

1 way your mouth is you would have been the first one hung.  
2 But you know they tease each other like that, like Marie  
3 said.

4 But one last comment I want you guys to  
5 understand, it's crazy why white people -- I always say that  
6 white people don't understand. There was two -- what do you  
7 call those people -- vikings. There's two of those people,  
8 they were coming -- like Scottsman, they were coming down from  
9 Bismarck the first time they were in the United States. But  
10 they were reading things about Native Americans, the food they  
11 eat, especially the Lakota people.

12 And one of them said, Well, I heard they eat a  
13 lot of wild berries and live in teepees, and all this, and the  
14 other one Ole was the one that was talking, he said, No, he  
15 said, They live in houses. And he said, Well, do they live  
16 off of the prairie and the food, and he said, Sure they do.  
17 He said, I was told that by a guy from Bismarck here.

18 He said -- Norwegians, that's who they were,  
19 they were coming on the reservation, he said, had you oh,  
20 look at this sign. It says you're coming on the reservation.  
21 That was before -- they got on the reservation, they came to  
22 a Minimart, a great big casino here that had food in it, and  
23 here he said, You know they always say the Lakota eat little  
24 puppies, he said. So he said, Well, we'll just go and see.

25 So they went to the Minimart and up there was a

1 hot dog, cheese, all this stuff was up there, and Ole, he  
2 said, polish sausage, and Ole said, you know, Sveen, I just  
3 got two dollars, so what do you think we're going to do now.  
4 Well, he said, you eat one, I eat one. So he said, hot dog.  
5 Okay, they got their hot dogs and got in their truck and going  
6 on down the reservation and they ate it up. Now, boy, Ole  
7 looked at Sveen and he said, Hey, what part of the dog did you  
8 eat.

9 Thanks for listening. That's a lot about culture  
10 jokes but, you know, no one knows anything, and they don't try  
11 to learn about Native Americans. Thank you.

12 MS. CLAIR GREEN: I'm going to have to ask you to  
13 stand up to get to that mike if you're going to speak. I  
14 would like to just let everyone know it's about ten of 12:00.  
15 Because of the weather and some distances people have to  
16 travel, we're going to try to close right at 12:00. So if  
17 anyone else has a short comment after this, we would be  
18 willing to hear you.

19 So I'll let this gentleman go forward. Could you  
20 give your name for the court reporter?

21 MR. LELAND LITTLE DOG: Thank you. My name is  
22 Leland Little Dog. I'm a teacher at Sinte Gleska University,  
23 and I would ask that you review the Universal Declaration of  
24 Human Rights, as well as the Convention Rights of the Child,  
25 because we're going to include these in there.

1 The U.S. is part of the U.N. and even though the  
2 CRC isn't ratified by the U.S. by consensus, they still have  
3 to enforce it, and what we're talking about today is Treaty  
4 right, international law and the UDHR is very brief. There's  
5 a lot of articles in here that I'm going to ask you to review,  
6 but I'm going to tell you the number of the article.

7 Article 1 is the right to equality. As human  
8 beings we have a right to have our cases heard in  
9 international court by fair tribunals. Article 2, freedom  
10 from discrimination. Don't want to be discriminated against,  
11 economically on otherwise. Article 6, right to recognition as  
12 a person before the law. Article 7, right to equality before  
13 the law. Article 8, we have a right to remedy by competent  
14 tribunal, meaning international tribunal.

15 Article 10, we have a right to a fair public  
16 hearing. Article 18, freedom of religion and belief.  
17 Article 19, freedom of opinion and information. Article 21,  
18 right to participate in government and in free elections.  
19 Article 22, right to social security. This affects our  
20 future social security.

21 Article 25, right to adequate living standard.  
22 This involves economics, future amount of money is going to  
23 affect us adversely. Article 26, right to education, meaning  
24 that we want our schools and we want our children involved in  
25 things that are going to affect us. We don't want to find out

1 about them a month before it's going to happen. We want to  
2 find out about them 20 years ahead of time.

3 Article 30, freedom from state or personal  
4 interference in the above rights. I'm sure that if this is  
5 reviewed carefully by everybody, you can find a lot more. And  
6 the other one is from the convention on the rights of a child,  
7 the CRC, because this issue affects our children's future.  
8 I'm just looking at Code 1 out of here. It's Article 3,  
9 protection of best interests. But I ask you to review the  
10 entire document. Thank you.

11 MS. CLAIR GREEN: Thank you. Mr. Francis Brown,  
12 president of the Medicine Wheel Coalition wanted to make a few  
13 brief comments, and after that I think we'll conclude the open  
14 comment period and the meeting with a closing prayer. So  
15 Mr. Brown.

16 MR. FRANCIS BROWN: Good morning everyone. My  
17 name is Francis Brown. I am the president of the Medicine  
18 Wheel Coalition. I've been here three days that I've been  
19 here. It's been very educational as far as the views of  
20 Native American people, the Treaty people and other concerned  
21 people.

22 So what I'm here for, I would like to say right  
23 now is, you know, I talked about getting an easement, too, you  
24 know, because I know damn well we are going to encounter some  
25 cultural resources along the corridor. It don't make no

1 difference where it goes, which route it takes. And the  
2 easement that I requested was to get an easement on there so  
3 that we could protect the cultural resources, whether they be  
4 eligible for the National Register, or if they are not.

5 But I think it's our duty to protect the ancient  
6 ones way of life and what they do at these places, I haven't  
7 seen any of them, but there may be some vision quest sites  
8 along there, too, and other sites that need protected. Those  
9 places, as we still do today, a thousand years from now as  
10 children now will be able to say, well, this marks a place  
11 where one of our relatives, or one of our people had fasted,  
12 to see that -- to keep the Indian people and increase in  
13 number all the time, that's what the old people always prayed  
14 for, that the people would always be here and increase.

15 So those things I think it's all of us job to  
16 protect those areas, because they mean a lot to us, and they  
17 also mean that that's why we're here. Another thing that I  
18 would like to kind of discuss right now a little bit is in  
19 spite of -- hell, you know the railroad is going to go  
20 through.

21 The government, whatever they do, regardless,  
22 they are going to do. If it's going to benefit the nation in  
23 one way or the other, they are going to do it, in spite of  
24 all our objections of doing that. But I think right now is  
25 the time, before the boat sinks, we should get our two cents

1 worth in here and start negotiating with these people that  
2 are going to do this. Because we have a good chance to sit  
3 down and negotiate what we think is going to benefit the  
4 people along that route.

5 I requested yesterday that they didn't haul  
6 hazardous material through the community of Red Shirt Table  
7 up there where the railroad is going to be nearby. And I  
8 think we still should protect our people from any  
9 endangerment for the children's sake. And so I think we  
10 should, you know, work on things like that.

11 Sit down and negotiate with them and, you know,  
12 if there's going to be -- I know there's going to be a train  
13 probably ever hour or so going through there once this thing  
14 is constructed. So there's going to be a noise factor there.  
15 Well, I think we should negotiate for compensation for the  
16 noise, the dust, and whatever else is going to be along -- the  
17 closest village is going to be by the road there.

18 You can sit down and negotiate or, you know, we  
19 can negotiate for the next ten years until we do get what we  
20 want from there. We want the railroad to do, because that --  
21 they do that in every town, they pay for things that they  
22 cause going through every town or nearby town, nearby  
23 community, the counties, states, cities, they get compensated  
24 for the railroad going through there, any railroad. It  
25 doesn't necessarily have to be DM&E.

1 So there's a lot of possibilities here that we  
2 could be doing while we're trying to stop the thing. But  
3 honestly, in spite of, hell, it's going to go through, so we  
4 should be negotiating for the worst because it is going to  
5 happen. So that we do have what we think we want, you know,  
6 the Treaty people here can negotiate a fee to be paid to  
7 whoever, the people or to the Treaty Council, so that it could  
8 help them do their work.

9 They can be financed by the railroad company to  
10 be able to go to meetings, and they wouldn't have to always be  
11 going on their own and stuff, and trying to get there and  
12 stuff. That money could be provided for -- any organization  
13 that needs assistance, or Tribes for children, recreation, or  
14 whatever it may be. All those things can be negotiated.

15 The easement I was talking about is so that the  
16 native -- the people, the Indian people can go in there with  
17 an easement and protect the cultural resources along that  
18 track. That's why I requested that, and that ain't  
19 impossible. That can be done. It has been done. We have  
20 done it with the missed people, the NOA people in Denver, the  
21 GSA. We've done it with the Big Horn Medicine Wheel, and so  
22 it's been done.

23 So nobody can't say it can't be done with any  
24 Federal agency. It can be done, but you have to sit down to  
25 do it and talk and negotiate with the Federal agencies. And

1 I think maybe another thing that a lot of people don't know,  
2 you know, when I got into this business about 15 or 16 years  
3 ago, I used to be involved in education among my people.

4 We started one of the first contract schools in  
5 the United States, where we contracted with the Bureau of  
6 Indian Affairs to operate a high school. And we didn't stop  
7 there. We worked with the county, the school districts, and  
8 we finally got one school district to take over the school as  
9 being a public school, and that's what we call Oyate Indian  
10 High School on my reservation.

11 So things aren't impossible if we can sit down  
12 and talk, get our point of views across, what we want, get it  
13 on paper. Don't just go there and talk, make damn sure there  
14 are minutes of the meeting. Here I'm glad this lady is here  
15 because everything we say is going to be written. If it isn't  
16 written, then we're wasting our time. But to the white man,  
17 once it's on paper and it's written, it automatically becomes  
18 sacred, like the Bible, you know.

19 So that's one thing, any time you go to a  
20 meeting, you want to make sure somebody is taking minutes,  
21 because you know we go to another meeting, we say, hi, you  
22 know, we said that there. Well, we don't have no record of  
23 it, you know, so make damn sure you have minutes taken at  
24 every meeting, no matter how big or small it is, and that  
25 gives you the reference that you can go and use that because

1 it's written.

2 And another thing is, you know, dealing with the  
3 Forest Service, you want to get their book, the blue one.  
4 They have a new one now a red one. So in there tells you what  
5 the policy in management of the Forest Service can and cannot  
6 do. You know, when you meet with any Federal agency, you  
7 should get their handbook policy, that way they can't say,  
8 hey, no, we can't do this. Well, you open the book and say,  
9 hey, on such and such a page it says here you can do it.

10 You know, that's the way we got to fight this  
11 thing because, you know, if we're not educated and  
12 knowledgeable about any Federal agency, and how their policy  
13 is, their management comes out of Washington, D.C., how they  
14 are going to manage stuff, and we go in there and just start  
15 talking about things that we really don't know about, the best  
16 defense for us is to know and read their policies and their  
17 management plans. That's the best way to do it. And that way  
18 you got something to fight with.

19 I've been doing this, bumping heads with the  
20 government for probably 40 years. But we always tried to find  
21 out what the law says and what their management plans are and  
22 what they have to work with. I do know there's one thing in  
23 there, you know, we had a threatened Big Horn National Forest  
24 to take them to court again, because they won. The Supreme  
25 Court gave them the authority to -- they can go in there and

1 destroy anything.

2 It don't make no difference whether it's sacred  
3 to you or not. Any sacred cultural site, the Forest Service  
4 can go in there and bulldoze those things over with no remorse  
5 to anybody. So those things I think we got to know. We got  
6 to know, since the Forest Service won the case, they can do  
7 anything they want. So that's another dangerous thing. But I  
8 think if we can sit down and negotiate, everybody comes out a  
9 winner. I think we will all win, and preserve something for  
10 the future generations of our people. And that's what I just  
11 wanted to say.

12 Another thing, somewhere along the paperwork  
13 floating around here there's supposed to be a liaison person,  
14 I guess, and for me and the Coalition that I speak for would  
15 like to have an Indian liaison person to work with that, going  
16 around to different Tribes, or however they are going to work,  
17 work with Clair or whoever to help them go and talk to people  
18 and have a better understanding. Thank you.

19 MR. JONES: Kind of in the spirit of what  
20 Mr. Brown was saying, can I ask if it would be possible to get  
21 a copy of these -- this record in real short order before the  
22 current time frame ends on January 5th? Is that possible,  
23 Vicki?

24 MS. VICTORIA RUTSON: Our intention was to get  
25 it transcribed from the court reporting company. We then

1 take a quick review, make sure everybody's name is spelled  
2 right, send it back to the company, and they issue the  
3 official record, which we buy from the company. Then it was  
4 our intention to make copies and give it to the Tribal  
5 chairman, so that each tribe who has attended has an  
6 opportunity to review the document.

7 Then we are also going to put transcripts of  
8 every meeting that we've held in this matter, you know, the  
9 ones in Wyoming, the ones in South Dakota, the ones in  
10 Minnesota, they are all going to be loaded on the Board's WEB  
11 site, so it will be on the computer as a public record for  
12 this case.

13 MR. JONES: Can I ask like the time frame that,  
14 on your home page or whatever, that this record will be  
15 available?

16 MS. VICTORIA RUTSON: I don't know that, only  
17 because we're just starting that process and this is -- since  
18 this is a big case and a controversial case, and a case with a  
19 lot of people interested, this is one of the first cases that  
20 we're doing that for, and it's certainly the most information  
21 that we've ever tried to do that with, so I can't tell you  
22 this is how normally -- how long it normally takes us to do  
23 it, because this is the first time we're doing it.

24 Obviously it's not going to be particularly  
25 helpful if we did it after the comment period expired, so

1 we'll try to get it done before that. And again, the Board  
2 is going to have a to something about the comment period,  
3 probably within the next two weeks.

4 MR. JONES: Okay. And in closing, I want to  
5 thank you guys very much for allowing us this opportunity.  
6 Thank you.

7 MR. TERRY GRAY: Just one more.

8 MR. FLYING BY: (speaking in Lakota.)

9 One of our relatives got up here and spoke about  
10 negotiating, okay, and that's not what we're here for. I'm  
11 not going to sacrifice our future and our land and our rights  
12 that we have. I will not see that happen, because we've  
13 always been economically poor, if you want to say it, but  
14 we're rich in our families.

15 And something we're forgetting about is, you  
16 know, childhood. I mentioned when a child is growing in a  
17 womb of a mother, when a child is born they keep the umbilical  
18 cord. That's what some of these older people here were  
19 talking about, the connection that we have to the earth, and  
20 our relatives, and our relatives are on this earth, that's  
21 what they are talking about. And no amount of money can buy  
22 that.

23 And so anyway my relative over here was standing  
24 up here talking about, you know, negotiating and we're going  
25 to lose out on deals and stuff. You know, for me anyway, I

1 don't know how many people here believe that way. We're not  
2 going to sacrifice to get some money or get some, you know,  
3 benefits or whatever. So that's what I want to share.

4 And the other part is when people work regarding  
5 our people, we need to be pure in the mind and heart and  
6 spirit and body, you know. We can't have alcohol, we can't  
7 have drugs, we can't have -- (Speaking in Lakota.) -- all this  
8 stuff. We have to be clear so that we think for the  
9 generations all the time and for the good life on the earth  
10 here.

11 And so some of the things that I've noticed while  
12 being here, you can negotiate deals while you're sitting  
13 around having a beer or alcohol or smoke or whatever, you  
14 know, that's not good to use those things and still represent  
15 the talk about sacred items, sacred objects. That's not a  
16 good thing.

17 And the archeologist -- I don't know if you're  
18 an archeologist. You made these papers. You need to keep  
19 God and man's ways separate, and you can't ever be above God  
20 because, you know, we -- it's going to come back to you  
21 because it's sacred.

22 A good example is people in the southwest, you  
23 know, are getting their remains back, and they are finding  
24 that chemicals they are using to determine age and, you know,  
25 all this stuff is harmful to our people. You're not aware of

1 like when you open up the ground, there's people there who had  
2 different sicknesses that passed away, that the white people  
3 don't have medicines for cure. Our people do, but you people  
4 don't, and I know those are a lot of things that are involved  
5 in this.

6 And so for me anyway, I want to stand up here  
7 and that's why I wore this T-shirt today, Native World Order.  
8 We have a good way of thinking and believing, so for me I will  
9 not sacrifice, and I know you people said you're here to hear  
10 comments, and you're not here to negotiate.

11 And we were having a meeting the other night with  
12 the older people here, and one of the elders mentioned, they  
13 said, watch out for the weak links in our group, in our chain,  
14 because you know those are the people that the government and  
15 these corporations are going to try to approach and influence,  
16 say yeah, the Indians want this, so they can be easily bought  
17 out.

18 So we all need to stand together, the Lakota  
19 people, and all the ones involved in the Treaty believe that  
20 way. So I want to say that, and voice that real strongly and  
21 make sure you put that in your record, you know. I'm not  
22 going to sacrifice generations and their lives to get a little  
23 bit of money that will go away. Anyway, we have never ever  
24 had money and we don't know how to use it anyway. We will go  
25 put it in the casino or play bingo or give it away. So I

1 wanted to say that much. Thank you.

2 MS. CLAIR GREEN: We'll have one last comment  
3 here and then --

4 MR. TERRY GRAY: We have one more over here.

5 MS. ANNE WHITE HAT: My name is Anne White Hat.  
6 I'm from St. Francis, South Dakota, and I recently moved back  
7 here to the reservation. I have a 13-month old son, and I  
8 want to express some concerns that I have about your project  
9 coming through. And I apologize for not being here the last  
10 couple of days of your meeting.

11 And I think one -- the main thing I would like to  
12 express is just getting, you know, if this thing does come  
13 through this area, I think we need to have some assurances  
14 that there will be no transportation of nuclear waste and  
15 hazardous materials coming through our area.

16 I know there has been a big push in Congress to  
17 get passed a nuclear waste transportation act, which would  
18 take -- which would haul -- basically haul spent waste from  
19 the East Coast across our highways and railroad systems to  
20 Yucca Mountain and Indian areas, in that area, and Skull  
21 Valley. And this legislation is before Congress, and if it  
22 happens and this railroad comes through, you know, we're --  
23 they are going to be hauling that stuff right near here. And  
24 if there's an accident, millions of people will be affected,  
25 you know, we'll be gone.

1 And I guess I would also like to express just the  
2 opposition of hauling the coal bed out of the Montana area. I  
3 know that there are Indian Tribes out there who are opposing  
4 coalbed methane development on their lands and, you know, we  
5 would be basically hosting a line for their destruction of  
6 their native lands to come through ours on the way out. So I  
7 just express opposition to the fact that that is -- would be  
8 happening, and also just begin to get some assurances that no  
9 hazardous waste can be coming through our area. Thanks.

10 MS. FAITH TAKEN ALIVE: My name is Faith Taken  
11 Alive, for your record, from Standing Rock. And again, I  
12 would like to express my gravest concern about the extension,  
13 and requesting an extension beyond January 5th, because we  
14 have not been provided with all the information.

15 An example I gave the other day, I'll give again,  
16 Phase I and II Evaluation of Cultural Resources for 317 miles  
17 of railroad reconstruction from the Minnesota border to Wall,  
18 South Dakota, DM&E's proposed Powder River Basin project,  
19 Finance Docket No. 33407, Volume 1, July 2000.

20 And I would also like to stress that too many of  
21 you are just learning about the Treaty process. Too many of  
22 you just found out new information. A lot of you sit there  
23 and you think -- you non Indians think it's free money.  
24 That's tax money. That's our dollars that the Indian people  
25 get. No, it's not. Those are Treaty rights. That's blood

1 money. Our ancestors died for that. They died and they made  
2 these agreements under distress and under duress. But they  
3 died for us. Every time we sign up at public health and get  
4 so-called free clinic, no, it's not free. Our ancestors died  
5 for that. That's not free money.

6 And we need to spread that message across the  
7 United States. Every time we open our falling down HUD  
8 shacks, our government homes, our ancestors died for that so  
9 we can have someplace to call home. Our land bases, as  
10 pitiful as they are today, the reservations that we have been  
11 confined to, our ancestors died for that.

12 So when you take that message to your people,  
13 that's blood money. It's not free money, because generations  
14 back our people died for that. They died so every one of us  
15 can stand here and talk to you. We have survived. No matter  
16 what has been wrought upon us, we have survived, and we are  
17 here. We have asked for that extension because of the  
18 information that has been withheld, and you ask and wonder why  
19 we believe in our Treaty rights? Because our ancestors died  
20 for that. And I can not stress that any more than I can  
21 today.

22 And as far IRA governments, we ask that you  
23 include the Treaty organizations on your information lists.  
24 Because when IRA governments obtain information, they believe  
25 it exclusively belongs to them. Although we are constituents,

1 we have the people who have voted them into those positions,  
2 and they are answerable to the Treaty organizations.

3 And I thank you for coming, and I thank you for  
4 allowing us all to speak and share and express our opinions.  
5 But always remember that Treaty rights is blood money. It is  
6 not free money. Thank you.

7 MS. VICTORIA RUTSON: I just wanted to say thank  
8 you very much for being gracious hosts to us, the lead agency  
9 and the Federal agencies for these past three days. I know  
10 we're all going to go back to our own agencies in our various  
11 states and make sure that we fulfill our responsibility to  
12 communicate your concerns and your views that you have  
13 expressed to us these past three days. I thank you very much.

14 MS. CLAIR GREEN: And I would also like to thank  
15 everyone for coming. It's always a privilege for me to get to  
16 hear everyone's concerns, and I always hope that I take away  
17 much more than I came with. And now I would like to ask for a  
18 closing prayer, please.

19 (Closing prayer in Lakota at this time.)

20 (End of proceedings.)

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